Secrt. Old No. 12-37. New No. H-15—75,000—31-1-48.

PUBLIC

(195 6) Department.

MS SERIES.

G.O. No. ~~MS.3532~~ 3535

Dated 16-8-1956.

closed.
Kol

[Despatch Abstract.]

Electricity--Madras Electricity Undertaking(Acquisition) Act, 1954--Udipi Company Electrical Undertaking--Acquisition by Government--Writ petition in Madras High Court--Papers recorded

FOR MYSORE STATE

H. Of. F. No. 699(4)—4,000—6-3-54.

[Writ of Certiorari—Order Nisi (to produce and/or to appear.)]

In the High Court of Judicature at Madras.

(Special Original Jurisdiction)

Mon, day, the thirtieth day of August

One thousand nine hundred and fifty four

Writ Petition No. 531 of 1954.

69923

Between: The Udipi Electric supply Corporation Ltd., by its liquidator C.S.Sastri. Petitioner.

and

The State of Madras represented by the Chief Secretary to the Government of Madras. Respondents.

To

The Chief Secretary to the Government of Madras representing the State of Madras. Respondent.

WHEREAS upon motion this day made unto this Court by Mr. K.S.Varadachari Advocate for the petitioner and the Court being of opinion that the records ~~in~~ relating to G.O.MS.No.237 Public Works Department, Government of Madras 18-1-1951 ~~on the file of~~ passed under Act 43 of 1949 together with the decision therein, should be called for and perused, it is hereby commanded

Government of Madras, the respondent herein

(1) that you The Chief Secretary to the/ do send forthwith for our use in the High Court of Judicature at Madras all and singular the said records and orders with all things touching the same as fully and perfectly as they have been made by you, and now remain in your custody or power together with this our Writ ~~on or~~ before the 11th day of October 1954 at ~~A.M.~~, and/or

the Government of Madras, the respondents herei

(2) that you The said Chief Secretary to the/ do appear before us personally (or by Advocate) on the said 11th day of October 1954 at 10-45 A.M., and show cause why this petition should not be complied with, and that we may cause further to be done thereon what of right and according to law we shall see fit to be done.

WITNESS the Honourable Mr. P. V. RAJAMANNAR, Chief Justice of the High Court of Judicature at Madras this 30th day of August in the year, One thousand nine hundred and fifty four.

K. Srinivasan 2.9.54

ASSISTANT REGISTRAR, Appellate side.

PNP.

Return of the Writ of Certiorari Order: Nisi.

(To be endorsed on Writ to appear)

The process of the Writ of Certiorari whereof mention is within made, was served on Respondent this 4th day of one thousand nine hundred and fifty

(Sd.)

4.9.54
(V. M. Vaidyanathan)
Asstt. Govt. Pleader

ASST. SECRETARY TO GOVERNMENT
4 - SEP 1954
PUBLIC

Rec'd Copy
on 4.9.54

WRIT AND RULE NISI.

W.P.No.631 of 1954.

FORM No. 8.

Return of the Writ of Certiorari Order: Nisi.

(To be endorsed on Writ to produce)

The process of the Writ of Certiorari whereof mention is within made, with all things touching the same in the several papers hereto annexed as within commanded.

The answer of
the Respondent herein

Dated the day of 195 .

(Sd.)

(Copy in Z.)

3/

GOVERNMENT OF MADRAS.
(Abstract).

ECTRICITY - Madras Electricity Supply Undertakings
equisition) Act, 1949 - Udipi Company.
ectrical undertaking - Vesting date - Declaration -
blished.

PUBLIC WORKS DEPARTMENT.

O.Ms.No. 237. Dated the 18th January, 195

ad:- G.O.No.1735 P.W. dated 24-8-1937.

From the Chief Electrical Inspector to Government,
No.5714 Accts/48-81 dated 2-1-1951.
From the Chief Engineer (Electricity) Endorsement
No.2969 C/50-2 dated 8-1-1951.

---

der:

Under section 4(1) of the Madras Electricity Supply dertakings (Acquisition) Act, 1949, (Madras Act XLIII of 49), His Excellency the Governor of Madras hereby declares that e electrical undertaking of the Udipi Electric Supply Corporaon Ltd., the licensee under the Udipi Electric Licence, 1937, all vest in the Government on the 1st June 1951 and directs der section 4(2) of the said Act that this order shall be blished in the Fort St. George Gazette and in the District zette of the South Kanara district.

2. In exercise of the powers conferred by rule 6 of the dras Electricity Supply Undertakings (Acquisition) Rules, 1950, s Excellency the Governor of Madras hereby appoints the Chief ectrical Inspector to Government, Madras, to be the Acquisition ficer for the purposes of the Madras Electricity Supply Underkings (Acquisition) Act, 1949 (Madras Act XLIII of 1949) and the id rules in respect of the electrical undertaking of the Udipi ectric Supply Corporation Ltd.

This order will be published in the Fort St. George Gazette d in the District Gazette of the South Kanara district

P.t.o.

4

3. Udipi Electric Supply Corporation Ltd., is requested to take action for (1) the appointment of an accredited representative in accordance with section 8 of the Madras Electricity Supply Undertakings (Acquisition) Act, 1949 and (2) the submission of the inventories and all particulars required under Section 17 of the said Act, the instructions in rules 7 to 9, 11, 13,14 and 20 of the Madras Electricity Supply Undertakings (Acquisition) Rules, 1950, being carefully followed for this purpose.

(By Order)

D. PADMANABHAN,
Secretary to Government.

To

The Udipi Electric Supply Corporation Ltd., 99-A, Armenian St., G.T.Madras (with covering letter)

The Superintendent, Government Press for publication (paras 1 and 2 only)
The Collector of South Kanara.
The Chief Electrical Inspector to Government
The Chief Engineer (Electricity)
The Madras Presidency Electrical Licensees' Association, Mount Road, Madras.
The Commissioner, Udipi Municipality thro'
The Chairman, Municipal Council.

True copy/ Forwarded/ By order.

J.K.Manuel.
Superintendent.

mk 10.1.

5

Petition of Writ Petition
(Under Article xxx of the Constitution of India)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Ordinary Special Jurisdiction

Writ Petition No. of 1954

, against

(G.O.Ms.No.237 Public Works Department, Govt. of Madras, dated 18th January 1954).

The Udipi Electric Supply Corporation Ltd. by its liquidator C.S.Sastri, with its Head office at No.15 Armenian Street G.T. Madras. ... Petitioner

vs.

The State of Madras represented by the Chief Secretary to the Govt. of Madras, Fort St. George, Madras 9. ... Respondent

1. The address of the Petitioner for service of all notices and processes is that of its advocate Mr.K.S.Varadachari at No.46, Law Chambers, High Court, Madras.

2. The Respondent is the State of Madras represented by the Chief Secretary to the Govt. of Madras, Fort St. George, Madras.

3. For the reasons stated in the accompanying affidavit the petitioner prays that this Hon'ble Court will be pleased to issue a writ of certiorari or such other appropriate writ (2) quashing the order of the State of Madras (G.O.Ms.No.237 Public Works Department dated 18th January 1951) passed under Act 43 of 1949 under which the Udipi Electric Supply Corporation Ltd. was taken over and directing the respondent to pay the fair and due amount of compensation for the illegal deprivation of the property of the company without any authority of law.

Dated at Madras this day of July, 1954.

COUNSEL FOR PETITIONER.

HIGH COURT, MADRAS.

Ordinary Special Jurisdiction.

Writ Petition No. of 1954.

The Udipi Electric
Supply Corporation
Ltd. by its liquidator
C.S. Sastri ... Petitioner

vs.

The State of Madras .. Respondent

Memorandum of Writ Petition
under Article 226 of the
Constitution of India.

Mr. K.S. Varadachari,
Counsel for Petitioner.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Ordinary Special Jurisdiction.

Writ Petition No. of 1954.

Lipi Electric Supply Corporation Ltd. by its liquidator C.S. Sastri .. Petitioner

vs.

The State of Madras represented by the Chief Secretary to the Government of Madras, Fort St. George, Madras. .. Respondent

AFFIDAVIT OF C.S. SASTRI.

I, C.S. Sastri, son of Venkatanarayana Garu, Hindu, Brahmin aged about 52 years, Chartered Accountant, 15, Armenian Street, G.T. Madras, solemnly affirm and state as follows:

1. I am the liquidator of the above company, which went into Members' voluntary liquidation, as it was acquired by the State of Madras under the Electricity Supply Undertakings (Acquisition) Act 43 of 1948.

2. The company was incorporated in 1926, under the Indian Companies Act and was carrying on the business of generating and supplying electric energy to the area covered by the licence granted by the Government of Madras under the Indian Electricity Act of 1910.

3. After running through several critical years, the company was just entering the phase of doing very good business and making very appreciable profits and the value of the materials and other assets of the company had considerably appreciated, when the respondent, the State of Madras by its G.O.Ms.No.237 Public Department dated 18th January 1951 passed under section 3 of Act 43 of 1948, declared that the company, shall vest in the Government of Madras as and from 1st June, 1951 and thereby acquired the undertaking of the company as a going con-

4. Under the Act 43 of 1949 the Accredited Representative of the company claimed compensation on behalf of the company under basis C of the provisions of the Act in the sum of Rs.1,90,410-8-9, after adjusting the Security Deposits of the consumers. But the State of Madras, the first respondent herein accepted the claim for Rs. 1,55,524--0--4 and they paid the same with interest as per the provisions of the Act. There is still a sum of Rs. 8,844--0--6 due as per the Arbitrator's Award which has been decreed.

5. By reason of such compulsory acquisition, the company was compelled to go into voluntary liquidation and accept the restricted choice of the basis of valuation of the undertaking and at the meeting of the shareholders held on 3-12-1958 I was appointed the Liquidator, to wind up the affairs of the company and in the course of the liquidation, I have distributed a proper portion of the compensation amount received, to the shareholders, in accordance with the provisions of the Indian Companies Act.

Since then, the Supreme Court of India, by its judgment in Civil Appeal No.72 of 1962, has held that the Madras Act 43 of 1949 is void and as such, the acquisition of the undertaking of the company by the respondent has now become illegal and void and the company would therefore be entitled to the restitution of all its properties and effects, by the respondent.

7. The respondent had, I understand and I believe the same to be true, after taking over the undertaking, during the course of the past 12 years, been dealing with the properties of the company in such a manner as to make it impossible for the restitution of the properties of the undertaking to the petitioner in the same old position in which it was taken over by the respondent.

On the other hand, I have distributed a major portion
he amount of compensation received from the respondent,
ngst the shareholders under the mandatory provisions of the
panies Act and it will be difficult to return the full
int of the compensation received from the respondent.

8. I state that as the acquisition of the undertaking by
respondent is illegal, void and without the authority of
, in view of the Judgment of the Supreme Court, the action
he respondent in taking over the undertaking, paying an
ly inadequate amount of compensation based on an illegally
ricted choice of valuation, under the void Act, is in effect
nfiscation of the property of the company and an illegal
ation of the fundamental rights of the company under the
titution Act.

9. I state that the respondent had taken advantage of the
gal enactment and deprived the company of its just and
ential rights and the lucrative valuable business, by paying
a portion of the just and real value of the undertaking, which
company had no other option but to accept and which
nt of so called compensation does not even cover the paid-up
of the shares due to the shareholders.

10. I submit, that the acquisition of the undertaking by the
ndent under the G.O.Ms.No. 237 Public Works Department dated
nuary 1951 is illegal and in any event the company is
it to be paid in the circumstances, a just, reasonable and
t of compensation, at least equal to the market value
undertaking less depreciation, as on the date of the taking
the undertaking, based on the provisions of the Indian
rity Act of 1910 under which the Government of Madras had
the licence to the company.

11. I state that on the basis of the fair market value less depreciation as on the date of the taking over of the undertaking by the respondent the company will be entitled to a sum of about Rs.4,20,000/- under the provisions of the Indian Electricity Act of 1910, and the respondent may adjust the amount of so called compensation so far paid and pay the balance due, as restitution by either side, has now become either impossible or impracticable.

12. The respondent however is attempting after the declaration of the Madras Act 43 of 1949 as void by the Supreme Court, to validate its illegal act of taking over the undertaking under the aforesaid G.O., by passing a statute through its legislatures.

13. I therefore submit that it is but just and necessary that this Hon'ble Court should be pleased to issue a writ of certiorari or such appropriate writ or order as to this Hon'ble Court may seem fit, quashing the order of the State of Madras G.O.Ms.No. Public Works Department dated 19th January 1951 passed under Act 43 of 1949 by which the undertaking of the Pdipi Electric Supply Corporation Ltd. was taken over by the respondent and also directing the respondent, the State of Madras to pay a fair, just and due compensation for the illegal deprivation of the property without the authority of law and pass such further or consequential orders as to this Hon'ble Court may seem fit in the circumstances.

Solemnly affirmed at the office of the Registrar, High Court, Madras, and signed his name in my presence this day of July, 1951.

Identified by me.

Counsel for Petitioner.

Commis

12

HIGH COUR

Ordinary Special Jurisdictio

Writ Petition No. 531 of 1954

The Udipi Electric Supply Corporation Ltd. by its liquidator C.S.Sastri with Head office at No. 15 Armenian Street G.T. Madras ... Petitioner

vs.

The State of Madras represented by its Chief Secretary to the Government of Madras, Fort St. George, Madras ... Respondent.

AFFIDAVIT.

Mr.K.S. Varadachari,
Counsel for Petitioner.

IMMEDIATE.

P.W.D.(I-2).

Memo. No. 69923/54-1 dated 10/9/54

SUB:ELECTRICITY - Udipi company elecl. undertaking - Acquisition by Govt. - Writ petition No.531 of 1954 in Madras High Court by liquidator of Udipi Electric Supply Corporation Limited.

--

A copy of the Order Nisi dated 30.8.1954 served by the Madras High Court on the Govt. in connection with the Writ petition No.531 of 1954 filed by the liquidator of the Udipi Electric Supply Corporation Limited in the High Court against the State of Madras, together with a copy of the petition and the affidavit filed by the liquidator, is enclosed. The Special Government Pleader is requested to prepare, in consultation with the C.E.I.G., the C.E.(E) and Advocate-General, the counter affidavit to be filed in the High Court on behalf of this Govt. draft counter affidavit to the for approval.

The Special Govt. Pleader, High Court, Madras (with encl.).

(copy of p 1 & H 5-11-4).

To the C.E.(E) Commd. Do
C.E.I.G.

20.9.54

11/9 (S.C.1)

Remarks in para 3 of C.O p 15 in fin

15

PUBLIC [illegible] DEPARTMENT.

:::

Abstract.

ELECTRICITY -- Nellore and Udipi Company Electrical Undertakings - Acquisition by Government - Writ petitions in Madras High Court - Defence - Sanctioned.

-x-x-x

17

at the time of the hearing of the petition.

(By Order of the Governor).

T.N.S. Nani,

SECRETARY TO GOVERNMENT.

To: The Advocate-General, Madras.
The Special Government Pleader, Madras, with enclosure.
The Chief Electrical Inspector to Government.
The Chief Engineer (Electricity).

Copy to: The Public (General-F) Department.
The Government of Andhra, Public Works and Transport Department, Kurnool.

/True Copy/Forwarded/By Order/

Superintendent.

N.R.
21/9.

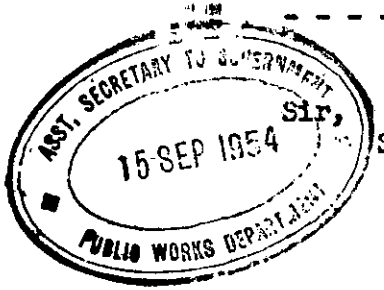
Tel:"Electricity" Electricity Department 'I M M E D I A T E'

72594

From
The Chief Electrical Inspector to Government,
157, Mount Road, Madras-2.

To
The Special Government Pleader,
High Court,
M A D R A S.

Letter No.151 N/51-237, dated 13-9-1954.



Sir,

Sub : Electricity - Udipi Electrical Undertaking - Acquisition by Government - Writ petition No.531 of 1954 in Madras High Court - by liquidator of Udipi Electric Supply Corporation Limited.

Ref : Government (Public Works Department), Memorandum No. 69923-I/54-1, dated the 10th September 1954.

In inviting your kind reference to the above Government Memorandum, I shall be glad if you can kindly let me know the date on which you would find it convenient to have consultations in the matter.

In this connection, I would also inform you, that as I shall be away on camp between 14th and 19th instants, any day after 19th instant will suit me.

Yours faithfully,

vb/13.9. Chief Electrical Inspector to Government.

p.t.o.

28

-2-

Copy to the Chief Engineer for Electricity, Madras-2 for information.

Copy to the Secretary to Government, Public Works Department, Madras.

21/ PWD(I2)

Memo no. 69923 I/54-3 dt. 10.54

Sub: Elecy - Udipi elect. undertaking
Acquisition by Govt. - Writ petition
no. 531 of 1954 on the of Madras High Court
Ref: Govt memo no. 69923 I/54-1 PW dt 10.9.54,
G.O.Ms no. 3332, PW, dt 21.9.54.

The attention of the Spl. Govt. Pleader is invited to the memo and para 3 of the G.O. cited & he is requested to expedite the submission of draft Counter affidavit to be filed in the High Court on behalf of the Govt. in connection with Writ petition no. 531 of 1954 relating to the Udipi electrical undertaking.

Spl. G.P., H.C. Madras (thro' Spl. messengers) RD 8/10/54.

1-X-54

1.10.54

1-X-54

23/

Special

PWD (Q2)

Memo no. 69923 Q/54-458 10/54

Sub: Elecy – Adipi elect. under-hauling – Writ petition no. 531/54 on file of Madras High Court – Req. Govt. memo no. 69923 Q/54-3 PW 5.10.54

The Spl. Govt. Pleader is requested to state the present position.

PW
8/10/54

To

The Spl. Govt. Pleader,
Madras

8/10 RD 8/10/54

9/10 RD 15/10/54.

24

PWD(Q)

Memoro. 69923/J/54-4 dt. 10-54. Special.

Subj: Elecy Indipn elecl. under

Instns in writ petition in

Madras High Court

Ref: Govt. Memo No. 69923/J/54-3 PWD dt. 1.10.54. & 21 ants

do do 69923/J/54-3 PWD dt. 8.10.54. & 23 ants

The Spl Govt Pleader is

requested to ~~expedite~~ state

the present position. To

15.10.54 15/10/54 15.10.54

The Spl Govt. Pleader,

Madras.

16/10 RD 25/10/54

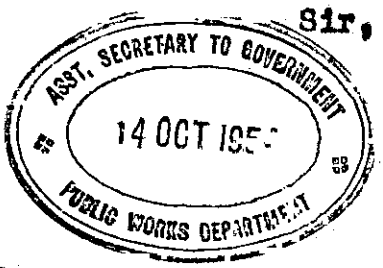
Tel:"ELECTRICITY" ELECTRICITY DEPARTMENT

From
The Chief Electrical Inspector to Government,
157, Mount Road, Madras.2.

To
The Special Government Pleader,
High Court, Madras.

79624 No. 161 N/51-244 dated 12-10-1954.

Sir,



Sub:: Electricity - Udipi Electrical undertaking - Writ petition No. W P No 531/54 in the High Court, Madras.

Ref:: Government Memo. No.3332 P.W.D. dated 21-9-54.

***

Further to the preliminary discussion that we had on 1-9-1954 in regard to the preparation of the counteraffidavit I forward herewith a note, on some of the points referred to in the writ petition, which may be useful to you in drafting the counter affedavits.

If you require any more information, I shall be furnishing the same on hearing from you.

Yours faithfully,

Chief Electrical Inspector to Government.

Encl: 1 note.

ns.12.10.

Copy to: The Chief Engineer for Electricity,
157, Mount Road, Madras.2. for information with enclosures.

" The Secretary to Government, Public Works Department, Fort. St. George., Madras.9.

***

21

Para 3 of the affidavit: As admitted by the petitioner himself, the undertaking was working badly for very many years. The statement below shows the profits for 1946 to 1951.

actually it was working at a loss even more in war years

Statement showing the "profits" earned by the Udipi Electrical Undertaking for the years from 1946-47 to 1950-51.

Date of vesting ., 31-5-1951.

Year.	Profit.	Remarks.
1946-47	Rs. 5,101--5--8	These profits are without providing for depreciation. After providing for depreciation, there would have been only losses.
1947-48	2,525--5--6	
1948-49	3,445--5--2	
1949-50	84--7--9	Calculated as per the Electricity Supply Act, 1948, which has become applicable.
1950-51 (upto vesting date).	412-11--4	
	11,569--3--5	

It will be seen that for 1946 to 1949 there were no profits at all, after providing for depreciation. For 1949 to 1951 though there were profits, they were quite negligible. The petitioner's statement that just before the taking over by Government, the company was entering the phase of doing very good business and earning very appreciable profits, is therefore not at all correct. For some years immediately prior to the taking over, the electric supply had become very unsatisfactory and there was continuous clamour from the public for improvement of supply and also for its expansion. But in view of the very poor financial working of the undertaking for very many years, the company was not able to raise further capital necessary for improving the existing engines and for installing more engines. So a ban had been imposed at the time, on any additional supply being given, in view of the insufficiency of the power house generating capacity. Of the two engines in the power house at Udipi one was exceedingly old and unsuited for public supply. The other, which was the main stay, had worked for ten years almost daily since there was no other

p.t.o.

engine to take the evening load. So even this engine had become unsatisfactory in performance. Any additional engine to be installed would have therefore merely helped to make the old big engine a standby one, so necessary for firm supply as stipulated in the Indian ElectricityAct,1910, but additional supply would not have been feasible. The licensee, therefore, even if he had somehow found it possible to incur some further expenditure, would have hardly pushed up his revenue. The financial working would have continued to be very unsatisfactory. The licensee had another single old very small engine in his power house at Karkal and there the supply position was much worse. The licensee would therefore have not at all been able to put the undertaking into the minimum efficient stage and earned any of the appreciable profits he has referred to. On the other hand if the Government had not acquired the undertaking, the electric supply in the place would have grown steadily worse the operating expenses would have steadily increased and the losses would have continuously mounted up.

Para 4 of the affidavit: Regarding the sum of Rs.8,844-0-6 due as per the Arbitrator's award and as per the decree of the High Court, a cheque for Rs.9,520-9-6 representing the amount of award and interest thereon Rs.676-9-0 was paid as deposit in the High Court under letter dated 15-4-54.

Para 7 of the affidavit: It is true that the undertaking taken over has been so greatly improved and expanded new engines put in, new lines added and existing lines strengthened etc., that restitution of the old properties of the undertaking to the petitioner in the same old position on which taken over by the Respondent is now impossible.

Para 11 of the affidavit: The claim for the properties on the market value basis as per the Indian Electricity Act of 1910 at Rs.4,20,000/- seems to be preposterously high, even if market value is to be the applicable. For the

market value basis and the power house engines, lines, sub-stations, services etc., have to be considered as an assembly of a going concern of which no section - pole or engine or wire - can be pulled out individually and sold away individually. The undertaking has to be treated as one which has to be kept intact and electric supply to the various consumers continued uninterrupted irrespective of whether the prices of individual materials like poles or engines shot up and so may bring large profits, or go down. If the acquisition had not been done, the petitioner as a licensee, would not have been able to sell away any of the individual items of assets like poles or engines to take advantage of the inflated prices at the time. He would have had to not only keep them on, but would have had to add and improve them by purchasing additional items at inflated prices, thus adding to his burden. For the collective assembly of these assets fulfilling the statutorily prescribed function of public supply, the price to be offered can only be that which in the market what a purchaser would pay for taking over all the assets together as a going concern as also the responsibilities for continuing to keep up the supply. The licensee's working had shown that this assembly of assets was proving unremunerative even on the basis of book value less depreciation. So no fair purchaser in an open market would have pai anything higher than this amount. Actually the amount of compensation paid was book value less depreciation plus a solatium also. Therefore, the market value of individual items added up, though it is not at all likely to come to the fantastic figure of Rs.4,20,000 has no significance whatsoever.

12.10.54

Chief Electrical Inspector
to Government.

gp/12.10.54.

From

V. V. Raghavan,
SPECIAL GOVERNMENT PLEADER
High Court, Madras-1

82/56

To

The Asst. Secretary to Govt.,
Public Works Dept.,
Fort St. George. Madras.

-2-

To 4392, dated 13-10-1954

Sir,

Sub: Writ Petition No. 531 of 1954, High Court, Madras.
(Udipi electrical undertaking)

Ref: Memo. No. 69923-I/54-5, dated 8-10-1954.

The matter is pending. ~~A further report will be sent to you when the Case is disposed of.~~

PWD (L2).

A.R.M 1-11-54.

V. V. Raghavan

~~For~~ Special Government Pleader.

TBS 13x54

23/X/54 28/10/54.

Memo No. 69923 D/54 5.11.54

Sub: Elecy. Tndipi elect. undertaking -
Writ petition in Madras High Court -
Draft counter affidavit -

P-314 Ref: From the Spl. Govt. Pleader,
No. 4392 dt. 13.10.54

The Spl. Govt. Pleader is
requested to expedite his reply.

Mr 1.11.54

The Spl. G.P., 1.11.54
Madras.

R-D (67) 154

CENTRAL DESPATCH BRANCH
Van.
Post.
T. Post.
Messenger.
1.11.54
135 Despatcher's Initials.

V.C.

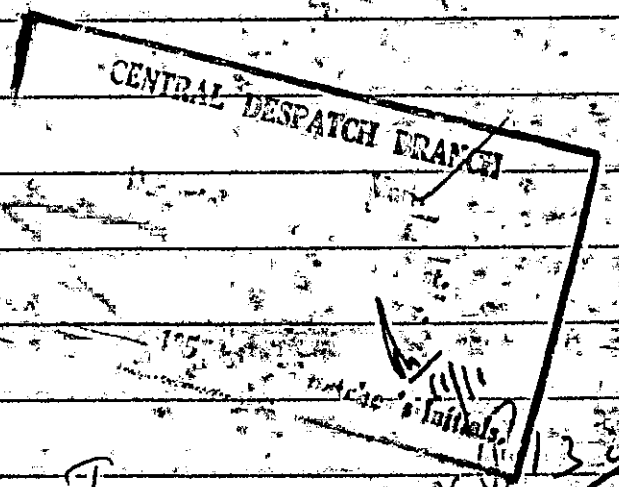
3S (Vol V)

Memo no. 69923 P/34—60

Sub. Elec. Indpt electrical undertaking. Writ petition in Madras High Court Draft Counter affidavit.

P33 Ref: Govt. memo no. 69923 I/34-5 Pwd. 11/33

The Special Govt. Pleader is requested to make in present Writ petition and also send to Govt. urgently the draft of the Counter affidavit called for in Govt. memo no. 69923 I/34—1 Pwd dt 10.9.34.



To
The Spl. Govt. Pleader,
@ Madras.

G.P. 32 (a)— 28,76,500—20-1-54 89788

Department | Received Registered

From (Name) V.V. Raghavan,

Designation Special Govt.Pleader, High Court, Madras.

To The Assistant Secretary to Government, Public Works Department, Fort St. George, Madras- 9.

PUBLIC SECRETARIAT TO GOVERNMENT 22 NOV 1954 Enclosures PUBLIC WORKS DEPARTMENT

No. 4686 dated 18-11-1954 19

Sir,

Sub:- W.P.No.531/54- High Court, Madras.
Electricity - Udipi Electrical undertaking.
Ref:- Memo.No.69923-I/54-4 dated 15-10-54.

The matter is pending. The Counter affidavit is under preparation and will be sent to Government shortly.

V.V. Raghavan

Special Government Pleader.

PWD(2)

A.R. LM 5-12-54

23.11.54

23.11.54

11.54

Reminder dt. 22.11.54 under

39 PWD (Y2)

Memo.no.699.23.d/54-7 dt 22-11-52

Sub:- Elec. Irrigation electrical undertakings
Writ petitions in Madras High Court -
Draft Counter affidavit -

Ref:- Govt. memo no. 699.23.d/54 dt 10-11-52

The Spl. Govt. Pleader
is requested to expedite this reply.

To

The Spl. Govt. Pleader,
Madras-1

19/11/52

19.11.52

21/11/52

41/HD(2)

29
8.12

Memo no. 69923 J/54-886

Sub:- Elect. Indpt. electrical undertaking - Writ petition in Madras High Court - Draft Counter affidavit -

Ref:- Govt. Memo no. 69923 J/54-1 dt 22.11.1954

The S/Pl. Govt. Pleader is requested to expedite this work.

To
The S/Pl. Govt. Pleader
Madras.

CENTRAL DESPATCH BRANCH
Van-Post
Despatched by Regd. Post Messenger.
15/12/54
Date 15-12-1954 Despatcher's Initials.

6/12/54 6.12.54

42

Memo no. 69923 L/52-9 PWD 15.12.52

Sub: Elecy - Addn. electrical lighting Work Pehibon in Madras High Court - Draft Counter affidavit

Special

Ref: Govt memo no. 69923 L/52 PWD 22.11.52

Ref

Memo no. 69923 L/52-8 PWD 6.12.52

Reminder

The Spl. Govt Pleader is requested to expedite his reply

To

The Spl. G.P. Madras

RD 26.12.52.

116

15.12.52

15/12/52

15/12/52

Memorandum 69923/54-10 dt 28/12/54

Special

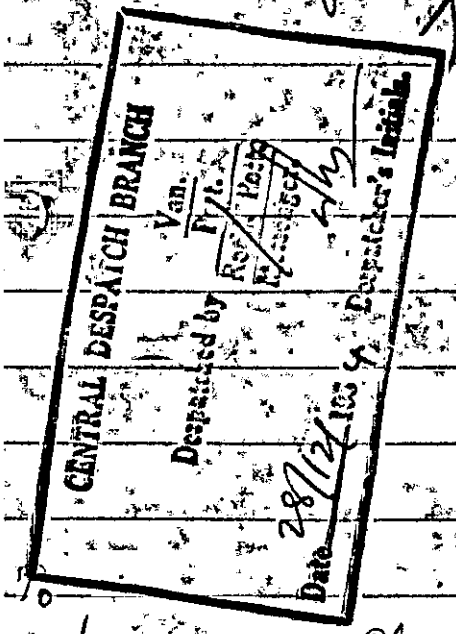
Sub: Elec - Kidipi electrical undertaking

Writ petition no. 531/954 in High Court

Draft Counter affidavit -

Ref: Govt. Memo no. 69923/54-3 Pw dt 1.10.54

The Spl. Govt. Pleader is requested to state when the writ petition under reference is likely to come up for hearing and to see that the draft of the Counter affidavit to be filed in the High Court on behalf of the Govt. is sent to Govt. well in advance of the date of the hearing of the ~~case~~ petition.



Spl. Govt. Pleader, High Court, Madras

RD 10/1/55

27.12.54

28/12/54

45 P.W.D (2)

73

11-1

Memora 69923 d/54 — 11 dt 10.1.55.

Sub: Elecy Nidipi electrical under

hauling Writ petition ave. 531/1954

in Madras High Court — Draft

counter affidavit —

P43 f Ref: Govt. memo ave. 69923 d/54 PWD 28 12/

J2

DESPATCH BRANCH

Var

Post

Despatcher's Initials

The Special Govt. Pleader

is requested to expedite his

reply

10/1/55

10/1/55

10-1-55

The Special Govt. Pleader

High Court Madras

(by name Corp)

RD. 1.2.55 A. V. V. R. Rathnavam.

V.L

47 PWD(I2)

Memo no. 69923 I/54-1251 I/55

Sub: Elecy - Udupi electrical undertaking - Writ petition No. 531/54 in High Court - Draft Counter affidavit -

Ref: Govt. memo no. 69923 I/54-10 PW I 28-12/54 dt. 10.1.55

The Spl. Govt. Pleader is requested to send this reply expeditiously.

Dept SO 9.2.55

To The Spl. G.P. High Court, Madras

RD 25/2/55

Ug 1.2.55

1.2.55

1.2.55

P43 y

P43 y

V.L

47 PWD(I2)

Memo no. 69923 I/54-12 I 1/55

Sub: Elecy - Udipi electrical undertaking - Writ petition No. 531/54 in High Court - Draft Counter affidavit -

Ref: Govt. memo no. 69923 I/54-10 PW I 28 12/54 ---- Dt. 10.1.55

The Spl. Govt. Pleader is requested to send this reply expeditiously.

Dept to 9.2.55

To The Spl. G.P., High Court, Madras.

1.2.55

1.2.55

1.2.55

RD 25/2/55

G.F. 52 (a)—28,70,506—20-1-54.

4

Department

From (Name) V.V.Raghavan,

Designation Special Govt.Pleader,

Station High Court, Madras.

11570

Received ——— Registered ———

To

The Assistant Secretary to Government
Public Works Department,
Fort St.George.

Enclosures

No. 5744 dated 11-2-1955 195

Sir,

W.P.No.531/54- High Court, Madras.
Electricity - Udipi Electrical undertaking.
Memo.No.69923-I/54-12 dated 1-2-1955.

I am enclosing herewith the draft Counter affidavit prepared in the above case, which after approval, may be fair typed on both sides, duly sworn to and signed on all pages and sent to me with four additional copies for being filed in Court.

V. V. Raghavan

Special Government Pleader.

Encl: (1)

Ref. to G.O. 1 C.
dated 10/2/55 p 53 in V

G.F. 32 (c)—25,75,506—20-1-54.

Department	Received ——— Registered ———
From (Name) V.V.Raghavan,	To
Designation Special Govt.Pleader,	The Assistant Secretary to Government
Station High Court, Madras.	Public Works Department,
11570	Fort St.George.

Enclosures (1)

No. 5744 dated 11-2-1955 195

Sir,

W.P.No.531/54- High Court, Madras.
Electricity - Udipi Electrical undertaking.
Memo.No.69923-I/54-12 dated 1-2-1955.

I am enclosing herewith the draft Counter affidavit prepared in the above case, which after approval, may be fair typed on both sides, duly sworn to and signed on all pages and sent to me with four additional copies for being filed in Court.

V.V. Raghavan
Special Government Pleader.

Encl: (1)

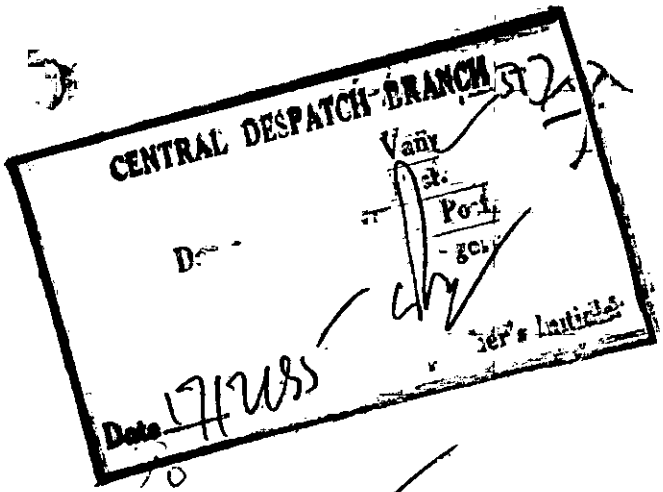
51/PWD(L2)

V.u

Memo no. 69923/54-13 J/17.2.55.

Sub: Elecy - Kadipi electrical undertaking - Writ petition no. 531/1954 in Madras High Court -

Ref: Govt Special Court. Pleader, Madras, no. 5744 dt 11.2.55.



It is presumed that the draft counter affidavit sent to the Govt. with the letter cited has been prepared in consultation with the C.E.(G), the C.E.(E) and the Advocate General. The Spl. Govt. Pleader is requested to state whether this presumption is correct.

The Spl. Govt. Pleader, Madras

17/2/55

17.2.55

Rep 1.3.55

17/2/55

G.F. 82 (e)—28,76,506—20-1-54.

53

Department

From (Name) V.V.Raghavan,

Designation Special Gvot.Pleader,

Station High Court, Madras.

15661

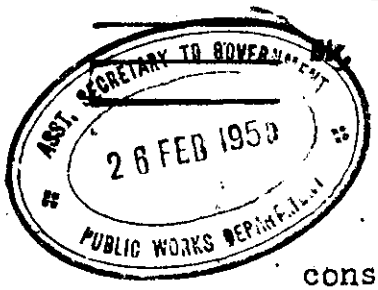
Received ——— Registered ———

To

The Assistant Secretary to Govt.,
Public Works Department,
Fort St. George.

Enclosures:

No. 5982 dated 24-2-1955 195



Writ Petition.No. 531 of 1954, High Court, Madras.
Electricity - Udipi Electrical Undertaking.
Memo.No.69923-I/54-13 dated 17-2-1955.

The draft Counter affidavit has been prepared in consultation with the Chief Electrical Inspector to Government only. Since the learned Advocate-General has not been requested to appear in the Writ Petition, he has not been consulted on the draft. However, I had a general discussion with him about the case. If the learned Advocate-General has to be consulted, instructions requesting him to appear in this case may be issued.

V.V. Raghavan

Special Government Pleader.

55.

P.W.D.(I-2).

Memo. No. 69923-I/54-14 dated 24/3/55.

SUB: ELECTRICITY - Udipi elecl. undertaking - Writ petition No.531 of 1954 in Madras High Court.

REF: From the Special Govt. Pleader, Madras, No.5982, dated 24.2.1955.

The attention of the Special Govt. Pleader is invited to Govt. Memo. No. 69923-I/54-1, P.W., dated 10.9.1954 wherein he was asked to prepare, in consultation with the C.E.I.G., C.E.(E) and the Advocate-General, the counter-affidavit to be filed in the High Court on behalf of the Govt. in connection with the writ petition relating to the Udipi undertaking. Orders were issued subsequently in G.O.Ms.No. 3332, P.W., dated 21.9.54 (copy communicated to the Advocate-General and the Spl. Govt. Pleader) requesting the Advocate-General to appear in the Madras High Court in connection with the writ petition under reference. In view of these orders, the Spl. Govt. Pleader is ~~therefore~~ requested to have the draft counter affidavit sent to Govt. with his letter No.5744, dated 11.2.55, settled in consultation with the Advocate-General and forward the same to Govt. for approval thereafter. The draft counter-affidavit is returned herewith.

CENTRAL DESPATCH BRANCH

Despatched by Van. / Post. / Runner.

Date 3/3/55. Despatche's Initials.

The Spl. Govt. Pleader, Madras.

(with draft in original)

V.W

57 / Pub (2)

Memo ono. 69923 J/54-15 & 26 J/55

Subt:- Elecy - Bdipsi elecn under Sec 14 (2) of Act - Writ petition ono. 531 in High Court -

Ref:- Govt. memo ono. 69923 J/54-14 J/55

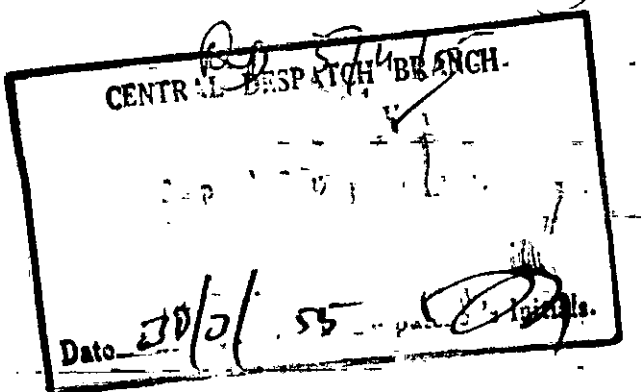
The Spl. Govt. Pleader is requested to expedite reply.

To

The Spl. Govt. Pleader, Madras-1.

26.3.55

26.3.55



5/ PWD(R)

Memo no. 69923/54-16 dt 4/

Very Urgent – Srh. Elecy – Indipi elect. undertak

– Writ petition no. 531/54 in

Madras High Court –

P.55 f. Rly. Govt. memo no. 69923/54-14 PW 52 3/5

P.57 f. and reminder dt 26.3.5

The Special Govt. Pleader is requested to send his reply expeditiously.

To 9/4/55

The Govt. Pleader

Madras

5.4.55

5/4/55

6/4/55

RD 29/4/55

C.F. 32 ~70,10,558—20-1-54.

	Department	Received ——— Registered ———
From (Name)	Sri V.V. Raghavan,	To
Designation	Special Govt.Pleader,	The Chief Electrical Inspector to Government,
Station	High Court, Madras.	157, Mount Road, Madras- 2.

29140

ASST. SECRETARY TO GOVERNMENT Enclosures 9 APR 1955 PUBLIC WORKS DEPARTMENT

No. 6444, dated 8-4-1955 195

Sir,

Writ Petition.No. 831 of 1954, High Court, Madras - Electricity - Udipi Electrical undertaking.
Govt.Memo.No.69923-I/54-1 dated 10-9-54.

I am enclosing herewith the draft Counter affidavit prepared by me in consultation with the learned Advocate-General after obtaining necessary instructions from you. The blanks in para (3) of the draft Counter affidavit may be filled in and the affidavit retyped after the facts mentioned therein are checked up, and it may be sent to the Government for approval before signing the same. The draft Counter affidavit after approval, may be fair typed on both sides, duly sworn to and signed on all pages and sent to me with four additional copies for being filed into Court at an early date.

V.V. Raghavan
Special Government Pleader.

Encl: Draft Counter.

Copy to:

(1) The Assistant Secretary to Government, Public Works Department, Fort St. George. Ref. Memo.No.69923-I/54-14 dated 2nd March 1955.

(2) The Chief Engineer for Electricity, 157, Mount Road, Madras - 2.

(from CEEG)
A.R./HL 20.4.55. (Mr. CEEG
Note recorded)
11.4.55.
11/4/55

63/PWD(L2)

Memo no. 69923 L/54-17821/55

V. Urgent Sub: Elecy - Indpt elect. undertaking - Acquisition by Govt. - Writ petition in Madras High Court - Pblg by: Sri M. Govt. Pleader, No. 6644 dt 8.4.1955.

The attention of the C.E.I.G. is invited to the letter cited and he is requested to expedite the (through the CSE) submission of the draft Counter affidavit for approval of the Govt.

CENTRAL DESPATCH BRANCH

To The C.E.I.G.

Date 26/4/55 R.D. 1.5.55

20/4/55 27/4/55 21/4/55

65

Electricity Department

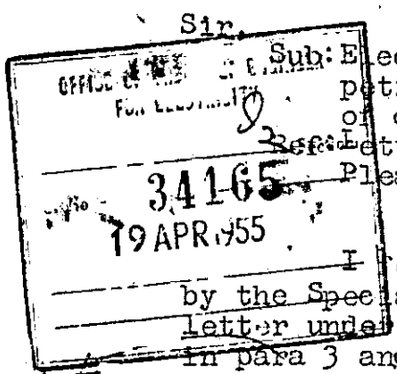
From
Sri K.V.Karantha, M.A., M.I.E.,
Chief Electrical Inspector to
Government, 157, Mount Road, Madras.2.

To
The Secretary to Government,
Public Works Department,
Fort St. George, Madras.9.

Through: The Chief Engineer for Electricity,
157, Mount Road, Madras.2.

Letter No.151 N/51-257 dated 16-4-55.

Sir,



Sub: Electricity - Udipi Electrical Undertaking - Writ petition No.531 of 1954 - High Court, Madras - Filing of counter affidavit on behalf of Government.

Ref: Letter No.6444 dated 8-4-55 from the Special Government Pleader, High Court, Madras.

I forward herewith the draft counter affidavit, prepared by the Special Government pleader and sent under cover of his letter under reference, after incorporating the details required in para 3 and also effecting certain minor corrections in regard to certain figures and references found necessary.

Regarding the contents of the draft counter reply, I would offer the following remarks for kind consideration of Government and for necessary modification of the draft if necessary.

(A) At page 3 of the draft counter affidavit, it has been said that "Accordingly the entire proceedings took place with the complete co-operation of the company acting by itself and through its Accredited Representative". In this connection, it may be observed that the Accredited Representative of the Udipi Electrical Undertaking by letter dated 23-5-51 informed that the Directors of the company agree to hand over the concern on 1-6-51 without prejudice to the company's rights for fair compensation. Again, while signing the declaration of vesting the Accredited Representative had made a similar reservation. The significance of these was already examined by Government and it was stated that the reservation would not affect the acquisition of the electrical undertaking by Government - vide Public Works Department Memo.No.2410 I/51-7 dated 23-7-51. So, the above statements of the Accredited Representative when viewed in the context of the co-operation actually rendered by him as stated in the draft counter suggest that on the whole the vesting of the undertaking has not been with his full co-operation. However, I leave this aspect to be decided by Government, whether this statement as it stands would be quite correct.

(B) In para 7 of the draft counter, reference to market value is made regarding compensation payable to the undertaking under the Indian Electricity Act 1910. In this connection, I would state that apart from contending that it will be impossible to fix up such values for purposes of assessing compensation it would also seem better if it is also said that "The licensee undertaking is to be viewed as a collective assembly of assets fulfilling the statutorily prescribed function of public supply and the price to be offered can only be what a purchaser would pay for taking over all the assets as a going concern".

(C) In para 8 of the counter, it has been stated that the compensation determined by the Government under basis (C) and by the arbitration is valid and binding on the company.

PTO

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-8-

Section 24 of the Act, which revalidates all proceedings taken under the old Acquisition Act of 1949, has also been quoted in this regard. In this connection, reference is invited to section 13(4) of the Madras Electricity Undertakings (Acquisition) Act 1954 according to which even the awards given before the commencement of the Act, are validated specifically and as such has the authority of the law. If necessary specific reference to this may also be made in the draft counter affidavit.

3. Subject to the above, I do not consider that the draft counter affidavit requires any other alteration. The draft counter may please be sent back to me after Government approval very early so that the same could be retyped after approval, sworn and sent to the Special Government Pleader for further necessary action.

Yours faithfully,

Chief Electrical Inspector
to Government.

Enc: 2 copies of the
draft counter.

Copy to the Chief Engineer for Electricity,
157, Mount Road, Madras.2.
Copy to the Special Government Pleader, Madras
for information.

RR/18.4.55.

18.4.55

Draft for Counter

67

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Original Special Jurisdiction.

W. P.No.531 of 1954.

The Udipi Electric Supply Corporation Ltd. by its Liquidation C.S.Sastri. ... Petitioner.

The State of Madras, represented by the Chief Secretary to Government of the Government, Madras. ..Respondent.

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT.

I, * * * * son of * * * aged about * * years, residing at * do hereby solemnly and sincerely affirm and state as follows:-

1. I am the Chief Electrical Engineer in the Public Works Department and am well acquainted with the facts of this case. I have perused the affidavit of Sri C.S.Sastri.

The respondent does not accept any of the allegations therein save those which are expressly admitted in this affidavit.

3. The petitioner Company was incorporated in 1936 for the purpose of working a licence to supply electric energy for the town of Udipi, but it was at no time working satisfactorily. The Madras Electiricty Supply undertaking (Acquisition) Act, (Act XL III)/1949) hereinafter referred to as the 'Act' came into force on 24-1-1950. Under the powers vested in the Government under that Act various notifications were issued for the acquisition of electricity undertakings in this State. In the year 1950 itself a number of electricity undertakings were so notified. Two Companies filed C.M.P.Nos.975 and 4697 of 1951 in this Honourable Court for a Writ to restrain the Government from taking over the undertakings contending that the Act was void on certain grounds. By the judgement dated 27-4-1951 the Madras High Court overruled the contention and held that the Act was valid and dismissed the petitions. In respect of the Udipi undertaking the order under Section 4(1) of the Act had been issued in G.O.Ms.No.237, (P.W.D.), dated 18-1-1951 fixing the vesting date as 1-6-1961. The petitioner Company did not raise any objection to the said notification

(p.t.o)

proceeding questioning the same. Pursuant to Section 8(2) Clause (2) which provides that the appointment of the accredited representative shall in the case of a Company be made by the shareholders at a meeting specially convened for the purpose, the meeting of the petitioner Company was held on 21-2-1951 at which they appointed Sri K.V. Subbarao to be its accredited representative in connection with the handling over of the undertaking to the Government and performing on behalf of the licensee all ancillary functions. By letter dated 23-5-1951 the accredited representative informed the Government that the petitioner would hand over the concern on 1-6-1951.

By letter dated 31-3-51 the accredited representative notified to the Government that the Company have adopted the basis C for compensation. On 1-6-1951 the accredited representative handed over possession to the Government and performing on behalf of the licensee all ancillary functions. By letter dated 23-5-1951 the accredited representative informed the Government that the petitioner would hand over the concern on 1-6-1951. representative of all the fixed assets and lists were prepared and signed on 1-6-1951. By letter dated 25-9-1952 the Secretary to Government, P.W.D. notified to the Company in G.O.Ms.No. P.W.D. 3985, dated 25-9-1952 that he had determined compensation payable to the petitioner company under the selected basis the sum of Rs. 157214-0-3. The Government deposited Rs.91500-0-0 on 10-12-1951, Rs. 65519-5-0 on 16-10-1952 Rs.20-14-0 on 25-11-1952 and Rs.564-4-0 on 6-5-1953. The Accredited Representative raised contentions about a few particular items in the valuations. In view of the disagreement between him and the department he requested a reference to arbitration of the selected items. By G.O.Ms.No.2334, P.W.D. dated 29-5-1953, the Government appointed Sri K.Chakravarthi as the Arbitrator.

(p.t.o)

The additional amount claimed before the Arbitrator was Rs.25973-0-0. The Arbitrator made his Award dated 14-9-1953 for Rs.8844-0-6. This Honorable Court passed a decree for the said sum on 7-1-1954. On 20-4-54 the Government made the additional deposit with the Special Officer of Rs.8844-0-6 under the decree together with Rs.676-9-0 by way of interest. An amount of annas 12/- towards interest for one day was also deposited on 1-12-54. Accordingly, the entire proceedings took place with the complete copperation of the Company acting by itself and through its accredited representative. The Company did not raise any objection to the Government taking over the undertaking or to the handing over of the fixed assets. On the vesting date, namely 1-6-1951 the licence came to a termination. After that date, Government have paid the compensation -- determined on the basis C -- and the only dispute was with reference to particular items claimed by the Company and even the dispute in respect thereof has been settled by arbitration and resolved by payment. In these circumstances the Company is estopped from claiming as it does in the Writ Petition that the G.O.No.237 P.W.dated 18-1-1951 should be quashed.

4. Government acted only on the footing of taking over the undertaking on terms of paying compensation on any one of the basis A, B or C which may be selected by the Company. That arrangement having been completed, it cannot be varied by substituting any other basis. The petitioner Company having knowledge of the alternative basis A, B and C under any one of which it could get compensation, handed over the undertaking without objection and accepted the compensation and even brought up the matter further to arbitration of extra claims which were again disputes relating to computation under basis 'C'. It is too late for the Company in July 1954 to raise any objection either to the Government order dated 18-1-1951 or to the subsequent proceedings. As stated above, the licence came to an end on 1-6-1951. Even now it is not claimed by the Company that it wants to or can continue to work the licence. On 3-12-1952 the Company went into liquidation and it appears from paragraph 5 of the affidavit in support of the petition that the liquidator has already distributed a major portion of the compen-

70

sation to the shareholders.

5. The allegations in paragraph 3 of the affidavit of Sri C.S.Sastri are not correct. As admitted therein the Company had several critical years. Actually it was working at a loss even after the war-years. The statement below shows the profits for 1946 to 1951:

Statement showing the "Profits" earned by the Udipi Electrical Undertaking for the years from 1946-47 to 1950-51.

Date of vesting 1-6-1951.

Year.	Profit.	Remarks.
1946-47	Rs.5,101-5-8	These profits are without providing for depreciation. After providing for depreciation, there would have been only losses.
1947-48	2,525-5-6	
1948-49	3,445-5-2	
1949-50	84-7-9	Calculated as per the Electricity Supply Act.1948, which has become applicable.
1950-51	412-11-4	
(Upto vesting date.)	11,569-3- 5.	

It will be seen that for 1946 to 1949 there were no profits at all, after providing for depreciation. For 1949 to 1951 though there were profits, they were quite negligible. The petitioner's statement that just before the taking over by the Government, the Company was entering the phase of doing very good business and earning very appreciable profits, is therefore not at all correct. For some years immediately prior to the taking over, the electric supply had become very unsatisfactory and there was continuous clamour from the public for improvement of supply and also for its expansion. But in view of the very poor financial condition of the undertaking for very many years, the company was not able to raise further capital necessary for improving the existing engines and for installing more engines. So a ban was imposed on any commitment for additional supply in view of the insufficiency of the generating capacity of the Power House.

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Of the two engines in the Power House at Udipi one was exceedingly old and unsuited for public supply. The other, which was the main stay, had worked for ten years almost daily since there was no other engine to take the evening load. So even this engine had become unsatisfactory in performance. Any additional engine to be installed would have therefore merely helped to make the old big engine a standby one for maintaining the existing supply. The licensee, therefore, even if he had somehow found it possible to incur some further expenditure, would not have been able to make any substantial income. The financial working would have still been very unsatisfactory. The licensee had another single old very small engine in his Power House at Karkala and there the supply position was much worse. The licensee would therefore have not at all been able to put the undertaking into the minimum efficient stage and earned any of the appreciable profits he has referred to. On the other hand, if the Government had not acquired the undertaking, the electric supply in the place would have grown steadily worse the operating expenses would have steadily increased and the losses would have continuously mounted up.

H8-9 and 5

6. As regards the allegation in paragraph 7 of the affidavit it is submitted that the Company handed over the undertaking to the Government without objection and took the compensation and distributed it to the shareholders; the fact that restitution is impossible cannot confer any higher rights on the petitioner.

H9-10

7. With regard to the allegations in paragraphs 10 and 11 of the affidavit of Sri C.S.Sastry it is respectfully submitted that there is no legal basis for the claim to substitute compensation on the basis of the provisions of the Indian Electricity Act, 1910. The basis under that Act is an entirely different one and the amount thereunder can be arrived at by a completely different method of calculation. Much of the calculation on the basis of the Electricity Act will now even

(p.t.o)

72

be difficult as it depends upon the selection of items and market value as on an earlier date. However that may be it is respectfully submitted that the petitioner cannot claim any such compensation especially for the events which have happened, much less by way of Writ Petition. The sum of Rs.4,20,000/- stated by him is preposterously high but as stated above it is not possible without detailed investigation and enquiry even to make an estimate of compensation on any other basis and it is respectfully submitted that the G.O.dated 18-1-1951 was one determining and effectuating the vesting of the electrical undertaking as an undertaking in the Government. So far as the Company is concerned the undertaking would vest in theCompany only on the basis of a valid licence under the Indian Electricity Act. The Company in winding up which has accepted this Compensation and distributed it to ~~xhmx~~ its shareholders cannot now from this point of view pray for the quashing of the said G.O.

8. With regard to the second part of the prayer in the petition, namely, for an order directing the State of Madras to pay compensation for illegal deprivation of property it is not a matter which can be gone into in a Writ Petition. As Stated above the acquisition was on one basis and it was done without objection and compensation determined by the Government under basis C and by the arbitration is valid and binding on the Company. While denying that there is any basis at all for the claim for compensation on some other basis, it is respectfully submitted that it is not a claim which can be made the subject of the Writ. The Court cannot go into any question of alleged value of the property. Further there is now in force with effect from 13-10-1954 the Madras Electricity Undertakings Acquisition Act, (XXIX of 1954). Section 24 of that Act has validated all proceedings taken and acts done under Act XLIII of 1949, that the prayer itself is ~~unsuitable~~ unsustainable

(p.t.o)

73

9. The petitioner submits that the compensation provided by the Act of 1949, is just and fair. It is also submitted that since the Act of 1949 has been certified by the President under Article 31 (6), Article 31 (2) is inapplicable. The acquisition was made and compensation determined and paid on a particular basis and it is respectfully submitted that that basis cannot be altered.

10. There are no merits in the application. It is therefore just and necessary that this application be dismissed with costs.

Solemnly affirmed at Madras, this day of April, 1955, and signed his name in my presence. Before me,

M A D R A S.

High Court, Madras.

W.P. No. 531 of 1954.

DRAFT COUNTER AFFIDAVIT.

The Special Govt.Pleader,
High Court, Madras.

9

Office of the
Chief Engineer for Electricity,
157, Mount Road, Madras. 2.

75

Endorsement No. 2588 E/54-11 dated 22-4-55.

Ref: Chief Electrical Inspector to Government's
letter No.151 N/51-257 dated 16-4-55
:::

M 65-66 ant

Forwarded to the Secretary to Government.

I endorse the remarks of the Chief Electrical Inspector to Government. The counter affidavit may be examined further by Government and approved for necessary further action.

M 67-73 ant

SECRETARY TO GOVERNMENT
26 APR 1955
PUBLIC WORKS DEPARTMENT

33890

for Chief Engineer for Electricity.

To
The Secretary to Government,
Public Works Department,
Madras.

Pdk.22-4.

34593

77

ELECTRICITY DEPARTMENT.

From
Sri P.V.Kamanthe, M.A., M.I.E.,
Chief Electrical Inspector to Government,
Mount Road, Madras 2.

To
The Secretary to Government,
Public Works Department,
Fort St.George, Madras 9.

ASST. SECRETARY TO GOVERNMENT
28 APR 1955
PUBLIC WORKS DEPARTMENT

No.151 M/51-258, dated 26-4-55

Sir,

Sub: Electricity - Udipi Electrical Undertakings - Acquisition by Government - Writ petition in the Madras High Court.
Ref: Government Public Works Department Memo.69923 I/54-17 dated 21st April 1955.

The draft counter affidavit referred to in the Government memorandum cited has already been sent to Government through the Chief Engineer for Electricity in this office letter No.151 M/51-257, dated 16-4-1955.

In this connection, I would state that as I am to go on leave from the 27th April 1955 pmx preparatory to retirement, the name of the officer, who is to swear to the counter affidavit on its approval by Government may please be specified so that further action in the matter may be taken up by him in consultation with the special Government Pleader.

Yours faithfully,

Chief Electrical Inspector
to Government
and Acquisition Officer.

gp/26.4.

Copy to the Chief Engineer for Electricity, Madras 2.

79

P.W.(I-2).

Memo.No. 69923 I/54- 20 dated 8-6-1955.

Sub: Electricity - Udipi elecl. undertaking - Acquisition by Govt. - Writ petition No.531/54 in Madras High Court.

Ref: From the C.E.I.G. No.151 N/51-257 dated 16-4-1955.

From the C.E.(E) No.2588 E/54-11 dated 22-4-1955.

Mh 65-66 cf

Mh 75 cf

✓ (Mh 67-73 cf as edited in pencil)

The draft of the counter affidavit to be filed in the High Court on behalf of the Govt. in the above Writ petition, as approved by the Govt., is enclosed. The C.E.I.G. is requested to follow the instructions of the Spl. Govt.Pleader in his letter No. 6444 dated 8-4-55 and send copies of the counter affidavit, duly signed and sworn to by him, to the Special Govt. Pleader for further action.

Mh 61 cf

9.6.55 Initials.

6.6.55

6-6-55

7.1.55

7655

To the C.E.I.G. (with enclosure - copy of pp.67-73 c.f.as edited in pencil)

To the C.E.(E).

To the Spl. Government Pleader, High Court, Madras.

Tel: "Electricity"

ELECTRICITY DEPARTMENT

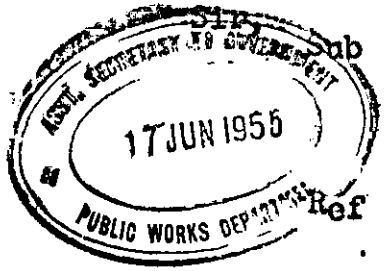
81

51312

From
The Chief Electrical Inspector
to Government,
157, Mount Road, Madras-2.

To
The Special Government Pleader,
High Court,
M a d r a s.

Letter No.151 N/51-263, dated 15.6.1955.



Sub : Electricity - Udipi Electrical Undertaking - Acquisition by Government - Writ petition No. 531/54 in Madras High Court - Counter affidavit Returned after signature.

Ref : 1) Your letter No.6444 dated 8.4.1955.
2) Public Works Department Memorandum No.69923 -I/54-20, dated 8.6.1955.
3) This office Telephonic Message dated 13.6.1955.
4) Your Telephonic Message dated 14.6.1955.

- - -

I return herewith the counter affidavit in respect of the Udipi Electrical Undertaking duly signed as required by you for further necessary action.

Yours faithfully,

15/6/55

~~For~~ Chief Electrical Inspector to Government and Acquisition Officer.

Encl: 5 copies of counter affidavit.

Copy to : The Secretary to Government, Public Works Department, Madras-9.
" The Chief Engineer for Electricity

WITH A copy of the ~~draft~~ counter affidavit.

ase at Special Cost. Madras reply dated 14-6-55.

82

Copy of Telephonic Message No.151 N/51-262 dated 14-6-55
From The Chief Electrical Inspector to Government, Madras-2.
To The Special Government Pleader, High Court, Madras.

-:-

Sub: Writ Petition No.531 of 1954 - High Court - Madras - Udipi electrical undertaking.
Ref: Your letter No.6444 dated 8-4-55. pblank

-:-

It is assumed that Chief Electrical Inspector to Government has to initial on each page of the counter affidavit and sign in full at the end. It is also assumed that Chief Electrical Inspector to Government need not go over to the High Court for signing the Counter affidavit and that his statement in the counter affidavit need be affirmed by a Gazetted Officer. Please confirm over phone.

/true copy/

C.N. Ramachandran
15/6/55

tsv.15-6-55.

Chief Accountant.

15/6

85

Copy of Telephonic Message dated 14-6-55 From The Special Government Pleader, High Court, Madras. To TheChief Electrical Inspector to Government, 157, Mount Road, Madras-2.

-:-

Sub: Writ petition No.531 of 54 - High Court - Madras-Udipi Electrical Undertaking.
Ref: Your Telephonic Message of 14-6-55. P83 wk

-:-

The Chief Electrical Inspector may please sign on all pages of the original Counter affidavit and any Gazetted Officer may attest the Signatures by initialing at the bottom of each page and signing his full name on the last page giving his designation. Four copies of the Counter affidavit may also be sent for use of court and counsel. It is not necessary for the Chief Electrical Inspector to go over here for filing the counter affidavit.

tsv.15-6-55.

/trye copy/

C. N. Sanshmanan
15/6/55

Chief Accountant.

Same as W.P. 67-73 and

87

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Original Special Jurisdiction.
W.P.No.531 of 1954.

The Udipi Electric Supply Corporation Ltd., by its Liquidator C.S.Sastri.	...	Petitioner.
The State of Madras, represented by the Chief Secretary of the Government of Madras.		Respondent.

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT.

I, K.M. Kuruvilla, son of K.M. Kuruvilla Esq., aged about 53 years, residing at Madras do hereby solemnly and sincerely affirm and state as follows:

1. I am the Chief Electrical Inspector to Government of Madras and am well acquainted with the facts of this case. I have perused the affidavit of Sri C.S. Sastri.

The respondent does not accept any of the allegations therein save those which are expressly admitted herein.

3. The petitioner Company was incorporated in 1936 for the purpose of working a licence to supply electric energy for the town of Udipi, but it was at no time working satisfactorily. The Madras Electricity Supply Undertakings (Acquisition) Act, (Act XL III)/1949) hereinafter referred to as the 'Act' came into force on 24-1-1950. Under the powers vested in the Government under that Act, various notifications were issued for the acquisition of electricity undertakings in the undivided Madras State. In the year 1950 itself a number of electricity undertakings were so notified. Two companies filed C.M.P.Nos. 975 and 4697 of 1951 in this Honourable Court for a writ to restrain the Government from taking over the undertakings contending that the Act was void on certain groun By the judgement dated 27-4-1951 the Madras High Court overruled these contentions and held that the act was valid and dismissed the petitions. In respect of the Udipi Undertaking the order under Section 4(1) of the Act had been issued in G.O.Ms.No.237 (P.W.D.)

15/6/55

p.t.o.

88

dated 18-1-1951 fixing the vesting date as 1-6-51. The petitioner Company did not raise any objection to the said notification proceeding questioning the same. Pursuant to Section 8(2) which provides that the appointment of the accredited representative shall in the case of a Company be made by the shareholders at a meeting specially convened for the purpose, the meeting of the petitioner Company was held on 21-2-1951 at which they appointed Sri K.V.Subbarao to be its accredited representative in connection with the handing over of the undertaking to the Government and performing on behalf of the licensee all ancillary functions. By letter dated 23-5-1951 the accredited representative informed the Government that the petitioner would hand over the concern on 1-6-1951.

By letter dated 31-3-51 the accredited representative notified to the Government that the Company have adopted the basis C for compensation. On 1-6-1951 the accredited representative handed over possession to the Government all the fixed assets and lists were prepared and signed on 1-6-1951. By letter dated 25-9-1952 the Secretary to Government, P.W.D. notified to the Company in G.O.Ms.No.P.W.D. 3985, dated 25-9-1952 that he had determined compensation payable to the petitioner company under the selected basis the sum of Rs.1,57,214-0-3. The Government deposited Rs.91,500-0-0 on 10-12-1951, Rs.65,519-5-0 on 16-10-1952 Rs.20-14-0 on 25-11-1952 and Rs.564-4-0 on 6-5-1953 and 0-4-0 on 6-5-53. The Accredited Representative raised contentions about a few particular items in the valuations. In view of the disagreement between him and the department he requested a reference to arbitration of the selected items. By G.O.Ms.No.2334, P.W.D. dated 29-5-1953, the Government appointed Sri K.Chakravarthi as the Arbitrator.

88 4.56 3.70 c

The additional amount claimed before the Arbitrator was Rs.25,973-0-0. The Arbitrator made his Award on 14-9-1953 for Rs.8,844-0-6. This Honourable Court passed a decree for the said sum on 7-1-1954. On 20-4-54 the Government made

ional deposit with the High Court of Rs.8,844-0-6 under-

H.h.H 15/6/55 a

the decree together with Rs.676-9-0 by way of interest. An amount of annas 12/- towards interest for one more day was also deposited on 1-12-54. Accordingly, the entire proceedings took place with the complete co-operation of the Company acting by itself and through its accredited representative. The Company did not raise any objection to the Government taking over the undertaking or to the handing over of the fixed assets. On the vesting date, namely 1-6-1951 the licence came to a termination. After that date, Government have paid the compensation -- determined on Basis C and the only dispute was with reference to particular items claimed by the Company and even the dispute in respect thereof has been settled by arbitration and resolved by payment. In these circumstances the Company is estopped from claiming as it does in the Writ Petition that the G.O.No.237 P.W. dated 18-1-1951 should be quashed.

4. Government acted only on the footing of taking over the undertaking on terms of paying compensation on any one of the bases A, B or C which may be selected by the Company. That arrangement having been completed, it cannot be varied by substituting any other basis. The petitioner Company having knowledge of the alternative Bases A, B and C under any one of which it could get compensation handed over the undertaking without objection and accepted the compensation and even brought up the matter further to arbitration of extra claims which were again disputes relating to computation under basis 'C'. It is too late for the Company in July 1954 to raise any objection either to the Government order dated 18-1-1951 or to the subsequent proceedings. As stated above, the licence came to an end on 1-6-1951. Even now it is not claimed by the Company that it wants to or can continue to work the licence. On 3-12-1952 the Company went into liquidation and it appears from paragraph 6 of the affidavit in support of the

petition that the liquidator has already distributed a major portion of the compensation to the shareholders.

5. The allegations in paragraph 3 of the affidavit of Sri C.S.Sastri are not correct. As admitted therein the Company had several critical years. Actually it was working at a loss even after the war years. The statement below shows the profits for 1946 to 1951:

Statement showing the "Profits" earned by the Udipi Electrical Undertaking for the year from 1946-47 to 1950-51.

Date of vesting 1-6-1951.

Year.	Profit.	Remarks.
1946-47	Rs.5,101--5--8	These profits are without providing for depreciation. After providing for depreciation, there would have been only losses.
1947-48	8,525--5--6	
1948-49	3,445--5--2	
1949-50	84--7--9	Calculated as per the Electricity Supply Act,1948, which has become applicable.
1950-51	412-11--4	
(Upto vesting date)	11,569--3--5	

It will be seen that for 1946 to 1949 there were no profits at all, after providing for depreciation. For 1949 to 1951 though there were profits, they were quite negligible. The petitioner's statement that just before the taking over by Government, the Company was entering the phase of doing very good business and earning very appreciable profits, is therefore not at all correct. For some years immediately prior to the taking over, the electric supply had become very unsatisfactory and there was continuous clamour from the public for improvement of supply and also for its expansion. But in view of the very poor financial condition of the undertakin- for very many years, the company was not able to raise further capital necessary for improving the existing engines and for installing more engines. So a ban was imposed on any commitment for additional supply

91

in view of the insufficiency of the generating capacity of the Power House. Of the two engines in the Power House at Udipi one was exceedingly old and unsuited for public supply. The other, which was the main stay, had worked for ten years almost daily since there was no other engine to take the evening load. So even this engine had become unsatisfactory in performance. Any additional engine to be installed would have therefore merely helped to make the old big engine a standby one for maintaining the existing supply. The licensee, therefore, even if he had somehow found it possible to incur some further expenditure, would not have been able to make any substantial income. The financial working would have still been very unsatisfactory. The licensee had another single old very small engine in his Power House at Karkala and there the supply position was much worse. The licensee would therefore have not at all been able to put the undertaking into the minimum efficient stage and earned any of the appreciable profits he has referred to. On the other hand, if the Government had not acquired the undertaking, the electric supply in the place would have grown steadily worse, the operating expenses would have steadily increased and the losses would have continuously mounted up.

6. As regards the allegation in paragraph 7 of the affidavit it is submitted that the Company handed over the undertaking to the Government without objection and took the compensation and distributed it to the shareholders; the fact that restitution is impossible cannot confer any higher rights on the petitioner.

7. With regard to the allegations in paragraphs 10 and 11 of the affidavit of Sri C.S.Sastry it is respectfully submitted that there is no legal basis for the claim to substitute compensation on the basis of the provisions of the Indian Electricity Act, 1910. The basis under that

15/6/57

p.t.o.

Act is an entirely different one and the amount thereunder can be arrived at by a completely different method of calculation. Much of the calculation on the basis of the Electricity Act will now even be difficult as it depends upon the selection of items and market value as on an earlier date. However that may be it is respectfully submitted that the petitioner cannot claim any such compensation especially for the events which have happened, much less by way of Writ Petition. The sum of Rs.4,20,000/- stated by him is preposterously high but as stated above it is not possible without detailed investigation and enquiry even to make an estimate of compensation on any other basis and it is respectfully submitted that the G.O. dated 18-1-1951 was one determining and effectuating the vesting of the electrical undertaking as an undertaking in the Government. So far as the Company is concerned the undertaking would vest in the Company only on the basis of a valid licence under the Indian Electricity Act. The Company in winding up which has accepted this Compensation and distributed it to its shareholders cannot now from this point of view pray for the quashing of the said G.O.

8. With regard to the second part of the prayer in the petition, namely, for an order directing the State of Madras to pay compensation for illegal deprivation of property it is not a matter which can be gone into in a Writ Petition. As stated above the acquisition was on one basis and it was done without objection and compensation determined by the Government under basis C and by the arbitration is valid and binding on the Company. While denying that there is any basis at all for the claim for compensation on some other basis, it is respectfully submitted that it is not a claim which can be made the subject of the Writ. The Court cannot go into any question of alleged value of the property. Further there is now in force with effect from 13-10-1954 the Madras Electricity Undertakings Acquisition Act, (XXIX of 1954).

Section 24 of that Act has validated all proceedings taken and acts done under Act XLIII of 1949, that the prayer itself is unsustainable.

9. The petitioner submits that the compensation provided by the Act of 1949 as validated by the Act of 1954 is just and fair. It is also submitted that since the Act of 1949 has been certified by the President under Article 31 (6) Article 31 (2) is inapplicable. The acquisition was made and compensation determined and paid on a particular basis and it is respectfully submitted that that basis cannot be altered.

10. There are no merits in the application. It is therefore just and necessary that this application be dismissed with costs.

15/6/55.

CHIEF ELECTRICAL INSPECTOR
TO GOVERNMENT.

Solemnly affirmed at Madras, this 15th day of June, 1955, and signed his name in my presence.

Before me.

C. V. Lakshmanan

Chief Accountant,
Office of the Chief Electrical Inspector to Government.

MADRAS.

High Court, Madras.

W.P.No.531 of 1954.

COUNTER AFFIDAVIT.

The Special Govt. Pleader,
High Court, Madras.

95/Q/PHD(2)

Memo no. 69925/57-215 15.7.57

59/167

Sub: Elecy - Udipi electrical undertaking - Acquisition by Govt. - Writ petition no. 531/57 in Madras High Court

Ref: Letter from CEIO, no. 151/N/57-263 dt. 6.57

Policy

From Spl. Govt. Pleader

The attention of the Special Govt. Pleader is invited to the above cited and he is requested to state the present position.

CENTRAL DESPATCH BRANCH

Teacher's Initials

To The Spl. Govt. Pleader, Madras.

15.7.57

15/7/57

97

From

V. V. Raghavan,
SPECIAL GOVERNMENT PLEADER
High Court, Madras-1

To

The Asst. Secretary to Government,
Public Works Department,
Fort St.George, Madras.

62766

No. 7599, dated 21st July, 1955.

Sir,

Sub: Writ Petition No. 531 of 1954, High Court, Madras.

(Electricity - Udipi Electrical Undertaking - Acquisition by Government.)

Ref: Your Memorandum No.69923-I/54-21, dated 15-7-1955.

ASST. SECRETARY TO GOVERNMENT
25 JUL 1955
PUBLIC WORKS DEPARTMENT

The matter is pending. A further report will be sent to you when the Case is disposed of.

PWD(P2)

=Ad Hoc 25/8/55

26.7.55 26.7.55 27.7.55

V Srinivasan

for *Special Government Pleader.*

99 P.W.D(I2)

65/2688

Memo No. 69923-I/57-22 dt 26/57

Sub: Elecy - Udipi Electrical Undertaking - Writ petition No. 531/57 in High Court - Reg: From the Spl. Govt. Pleader, No. 7599 dt 21.7.57.

DESPATCH BRANCH

The Spl. Govt. Pleader is requested to state the present position.

To

The Spl. Govt. Pleader.

25/8/57

25/8/57

Rd 15/9/57

9

101

From

V. V. Raghavan,
SPECIAL GOVERNMENT PLEADER
High Court, Madras-1

ASST. SECRETARY TO GOVERNMENT
3 SEP 1955
5260

To

The Assistant Secretary to Govt.,
Public Works Department,
Fort St. George.

No. 830, dated 1/9/1955 195 .

Sir,

Sub: Writ Petition No. 531 of 1954, High Court, Madras.
(Electricity - Udipi Electrical Undertaking-

Ref: Memo No.69923 I/54-22 dated 26-8-1955. Pgg ante

The matter is pending. A further report will be sent to you when the Case is disposed of.

PWD(P2)
AR MI 5-10-55
MI 5.9.55
5/9/55

V. V. Raghavan

Special Government Pleader.

103 Pub(2)

13/10

Memorandum 69923/34-23561/JJ.

Sub: Elecy Adipi Elect. undertaking - Writ petition No. 531/34 in Madras High Court - Re: From the Special Govt Pleader, Madras, No. 8301 dt 1.9.34.

The Special Govt. Pleader is requested to state the present position.

The Spl. Govt. Pleader, Madras.

5/x/34 Pub 5/10/34

5/10/34

CENTRAL DESPATCH BRANCH

Van
Post.
Dispatched by
P.O.T.
over.
Despatcher's initials.
Date

From

V. V. Raghavan,
SPECIAL GOVERNMENT PLEADER
High Court, Madras-1

To

105

The Asst. Secretary to Govt.,
Public Works Department,
Fort St. George, Madras.

No. 9040. , dated 17/10/1955.

ASST. SECRETARY TO GOVT. PUBLIC WORKS DEPARTMENT 21 OCT 1955 12497

Sir,

Sub: Writ Petition No. 531 of 1954, High Court, Madras.
(Electricity - Udipi Electrical undertaking - Stage - reported. 103 and

Ref: Memo. No. 69923 I/54-23, dt 6/10/55.
Article to - 1 pre-war stage of writ petition.

The matter is pending. A further report will be sent to you when the Case is disposed of.

DW(Rz)

AR MM 25-11-55.

28/10/55-10

28/10/55

(The brief is to forwarded further case if sent to Law)

V. Srinivasan

for *Special Government Pleader.*

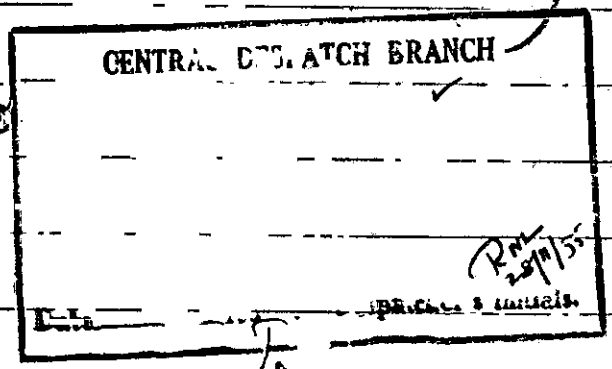
107 PWD(P2)

Memo no. 69923 P/54-24526 "/57

25/11

Sub: Elecy - Indiln elecl. undertaking - Writ petition no. 531/54

Ref: Govt. Spl. Govt. Pleader, No. 9040 dt 17.10.57



The Special Govt. Pleader is requested to expedite his reply stating the present position.

The Spl. G.P. Madras.

25.11.57

25/11/57

26/11/57

From

V. V. Raghavan,
SPECIAL GOVERNMENT PLEADER
High Court, Madras-1

18984

To

The Asst. Secretary to Govt.
Public Works Department,
Fort St. George, Madras.

107

ASST. SECRETARY TO GOVT. 7 DEC 1955 PUBLIC WORKS DEPARTMENT

No. 9671, dated 5-12-1955

Sir,

Sub: Writ Petition No. 531 of 1954, High Court, Madras.

(Electricity - Udipi Electrical Undertaking - Stage reported.

Ref: Memo. No. 69923-I/54-24 dt 26/11/55

- P 107 and

The matter is pending. A further report will be sent to you when the Case is disposed of.

PWD (I2)

AR HM 5/12/55

9.12.55 9/12/55

Yours faithfully,

V. Srinivasan

for Special Government Pleader.

III PWD(E)

Memo no. 69923 J/54-25-59/

Sub: Elecy - Cuddapah Electrical undertaking - Writ petition no. 531/1954 in High Court -

Ref: Item in Std. G.P. no. 9671 dt. 12/12/55.

The Std. Govt. Pleader is requested to state the present stage.

The Std. G.P. 6.1.56

8/1/56

CENTRAL DESPATCH BRANCH
Van.
Post.
Dispatched by Regd. Post.
Messenger.
Dispatcher's Initials
Date 7-1-56

CENTRAL TEST BRANCH
Van.
Post
Received by Regd. Post
Date
Despatcher's Initials.

Memo no. 69923 J/54-26 dt 8/56.

Sub: Elec. Indpt. elect. undertaking writ petition no. 531 of 1954

Ref. Govt. memo no. 69923 J/54-25 dt 9/56

The Stg. G.P. is requested to state the present position

The Stg. G.P

115

From

V. V. Raghavan,
SPECIAL GOVERNMENT PLEADER
High Court, Madras-1

To

The Asst. Secretary to
Govt.,
Public Works Dept.,
Fort St. George, Madras.9

No. 987, dated 17-2-1956.

Sir,

Sub: Writ Petition No. 53 of 1954, High Court, Madras.
(Electricity - Udipi Electrical Undertaking - Stage - reported.

& 26

Ref: Memo. No. 69923-I/54-26 dt. 8/2/56.

2

The matter is pending. A further report will be sent to you when the Case is disposed of.

AND(2)

A.L. Till 20.3.1956.

17/2/56 24/2/56 27/2/56

D. V. Suryanarayana.
For *Special Government Pleader.*

17/2

117 PWD(R2)

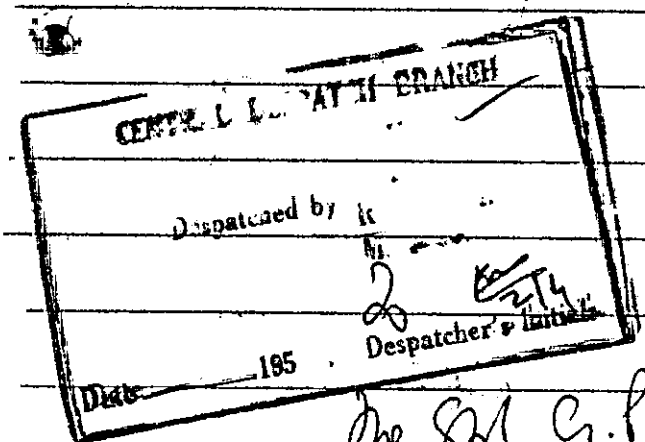
Memo no. 69923 / 54-27 dt. 21/3/56

21/3/56

Sub: Elecy - Udipi Elect. Undertaking - Writ petition no. 531 of 1955.

Ref: Note in Spl. G.P. no. 987 dt 17.2.56

The Spl. G.P. is requested to state the present stage of the writ petition.



The Spl. G.P.

21.3.56

21/3/56

(CWO. 69923 V/54)

118

PWD(Q)

The writ petition preferred by the licensee Co. has been dismissed by the Hon'ble Court, and copy of the judgment is awaited.

L.O. dtd 15-5-86

Dismissed as withdrawn

16/4/86

119

PUBLIC WORKS DEPARTMENT.
Memorandum No. 52651 - I /55 - 15 dated 16th April,1956.

Sub: Electricity - Madras Electricity Undertakings (Acquisition) Act 1954 - ~~Srivilliputhur~~, Udipi, ~~Srikakulam and Salur Parvatipur~~ Electrical Undertakings - Writ petitions Nos. ~~526/55, and 530 to~~ 531 of 1954.

Ref: From the Special Government Pleader, Madras No. 1627 dated 28.3.1956.

..

The Special Government Pleader, Madras, is requested to obtain and forward to the Government copies of the judgment of the High Court, Madras, in the above writ petitions.

2. The originals of papers of G.O.Ms.No.237, Public Works, dated 18.1.1951 ~~and G.O.Ms.No.2059, Public Works, dated 17.5.1951~~ declaring the vesting dates in respect of Udipi ~~and Srivilliputhur~~ company Electrical Undertakings were forwarded to the Special Government Pleader, Madras with G.O.Ms.No.3332, Public Works, dated 21.9.54 ~~and G.O.Ms.No.2215, Public Works, dated 4.6.55 respectively~~ for being filed in the High Court in connection with the writ petitions. The Special Government Pleader is requested to arrange for their return urgently.

K. Sankunni Menon,
Assistant Secretary to Government.

To
The Special Government Pleader, Madras.

/Forwarded/by order/

MRC.19.4. SUPERINTENDENT.

(Copy)

H3-57(2) PWD(P2)

The orgl. papers of G.Oms. 237 PWD 18.1.1951 have since been received back from Govt. Pleader in W.P. No. 526 to 531/55. and have been restored to the relevant G.O. (2)

Xerox copy of judgment may be arranged. 20 xll 16/56

14/5/56 14/5/56 14/5/56

120

Ref: [illegible]

Copy of judgment has not been received as yet, and the Govt. Counsel is being reminded separately

LOM 1-7-56

121

IN THE HIGH COURT OF JUDICATURE AT MADRAS.
Special Original Jurisdiction
Tuesday, the twenty seventh day of March,
One thousand nine hundred and fifty six,
Present:
The Honourable Mr.Justice Rajagopalan.

Writ Petition No.531 of 1954.

M/s.The Udipi Electric Supply Corporation Ltd., by its liquidator C.S.Sastri ... PETITIONER.

Vs.

The State of Madras represented by the Chief Secretary to the Government of Madras, Madras. ... RESPONDENT.

Petition under article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to issue a writ of certiorari or such other appropriate writ and to quash the order of the State of Madras (GO.Ms.No.237, Public Works Department dated 18-1-1951) passed under the Act 43 of 1949 under which the Udipi Electric Supply Corporation Ltd., was taken over and directing the Respondent herein to pay the fair and due amount of compensation for the illegal depriation of the property of the Company without any authority of law.

ORDER: This petition coming on for hearing on 24th, 25th, 27th and 30th days of January and 1st day of February 1956 upon perusing the petition and the affidavit filed in support thereof and the order of the High Court dated 30-8-1954 and made herein and the counter affidavit filed therein and the records material to this petition and upon hearing the arguments of Mr.K.S.Varadachari, Advocate for the Petitioners and of the Advocate General for the State, the Respondent herein on all the days and this petition having stood over for consideration till this day, the Court made the following

O R D E R:

For the reasons given in my Judgment in W.P.No.326 of 1955, I direct that the Rule be discharged and this Petition be dismissed with costs.

(memo. of costs.

p.t.o.

122

Memorandum of Costs.

	Rs.	A.	P.
Respondent's Costs.			
Stamp for vakalatnama			
For Advocate's fee vide W.P.530/54	--		
Translation and Printing charges ..	0	0	0
To be paid to the Petitioner to the Respondent.	0	0	0

(Sd.) M.Narayanaswami Iyer.
Assistant Registrar, A. S.

(TRUE COPY)

Sub Assistant Registrar, A.S.

To

The Chief Secretary to Government, Fort St. George, Madras,
(with records).

One c.c. to the Advocate-General, Madras.

124

Dated 27-3-1956.

ORDER:

W.P.No.531 of 1954.

Dismissing with costs the petition for the issue of a writ of certiorari and to quash the order of the State of Madras (G.O.Ms.No.237, P.W.D. dated 18-1-51) passed under the Act 43/49 under which the petitioner's concern was taken over and to direct the Respondent to pay compensation for the same.

(2)

125

Public Works Department. (Govt. is in G.Os. 3536 16-8-56

Memorandum No.71172.I/54-30, Dated the 2nd August, 1956.

Sub: Electricity - Srikakulam, Salur - Parvatipur and Udipi Company Electrical Undertakings - Acquisition of - Writ petitions Nos.530 to 532 of 1954.

A copy of the judgments of the Madras High Court in the above writ petitions is forwarded to the Chief Electrical Inspector to Government and the Chief Engineer (Electricity) for information. The attention of the Chief Engineer (Electricity) is invited to the order of the High Court in the judgment relating to Writ Petition No.530/1954, and he is requested to take steps to recover from the Liquidator the sum of Rs 250/- (Rupees two hundred and fifty only) being the cost awarded to Respondents (Madras and Andhra Governments) and to report the result. The apportionment of the cost between Madras and Andhra Governments will be considered separately.

S.K.Chettur,
Secretary to Government.

To
The Chief Electrical Inspector to Government.
The Chief Engineer (Electricity). (With enclosures)

Forwarded/By order.

BRM/6/8. Superintendent.

S.F. 82 (a)—28,76,506—20-1-54

Department Received Registered

From (Name) Sri V.V.Raghavan,

Designation Special Govt.Pleader,

Station High Court, Madras.

The Secretary to Government,
Public Works Department,
Fort St. George.

Enclosures: No. 4681 dated 24/8/1956 195 .

Sir,

Sub: Writ Petition No. 531/54, High Court, Madras.
ELECTRICITY - Udipi Electrical Undertaking -
Acquisition by Government - Order copy-forwarded.
My letter No. 1627 dated 28-3-1956.

ASSISTANT SECRETARY TO GOVERNMENT
3445
27 AUG 1956
PUBLIC WORKS DEPARTMENT

Ref

I am sending enclosed a certified copy of the order of the High Court in the above Writ Petit on receipt of which may kindly be acknowledged.

V. V. Raghavan

Special Government Pleader.

End : one.

Copy to the Chief Electrical Inspector to Government,
157 Mount Road, Madras.2.

FIVE ANNAS
GOVERNMENT OF MADRAS
सत्यमेव जयते
COPY STAMP
5 As
५ आना

In the High Court of Judicature at Madras.

Special Original Jurisdiction,

Tuesday, the twenty seventh day of March,

One thousand nine hundred and fifty Six.

Present:--

The Honourable Mr. Justice Rajagopalan.

Writ Petition No. 531 of 1954.

M/S The Udipi Electric Supply corporation Ltd.

by its liquidator C.S. Sastri. -- Petitioner

vs.

The State of Madras represented by the Chief

Secretary to the Government of Madras, Madras---

Respondent.

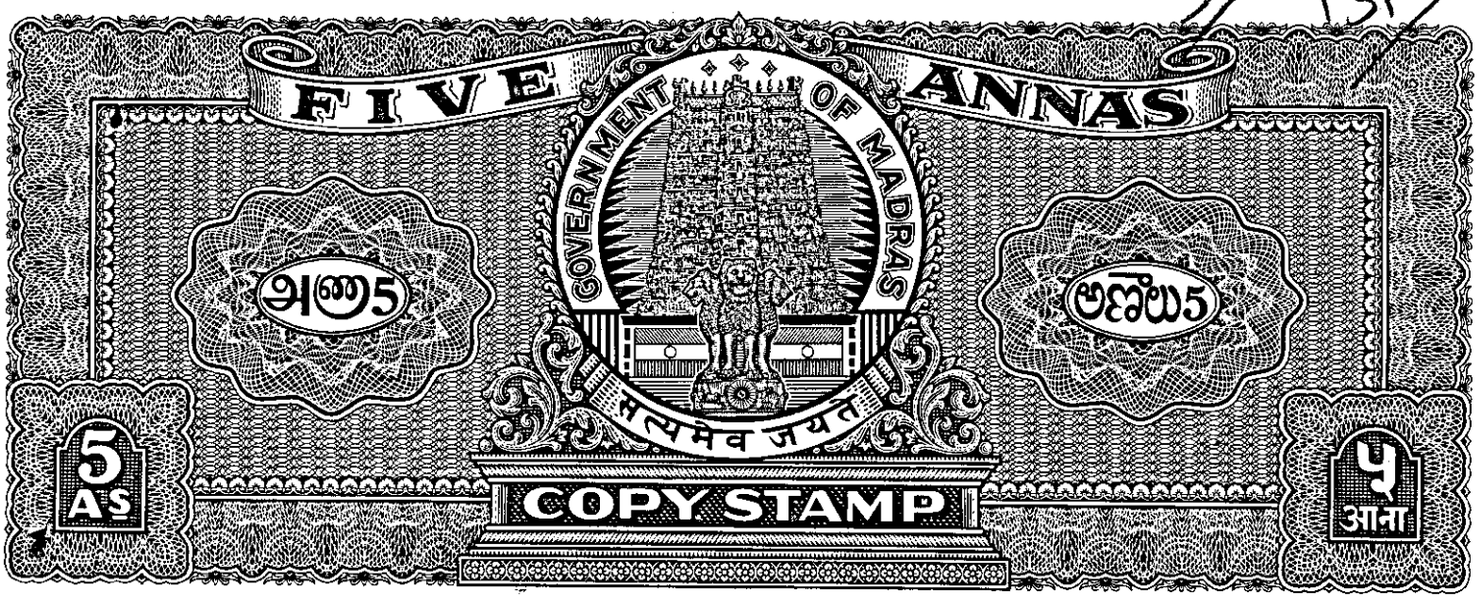
Petition under article 226 of the constitutio of India praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to issue a writ of certiorari or such other appropriate writ and to quash the order of the state of Madras (G.O. Ms. No. 237; Public Works Department dated 18-1-1951) passed under the Electric Act 47 of 1949 under which the Udipi Supply corporation Ltd, was taken over and directing the Respondent herein to pay the fair and due amount of 1-ters

E 130

CI 3631.
WP. 531/54 & 2
27/7/56

Special Government Pleader,
Madras.

6(Sitting)
27/7/56.



due amount of compensation for the illegal deprivation of the property of the company without any authority of law.

ORDER:- This petition coming on for hearing, on 24th, 25th, 27th and 30th days of January and 1st day of February 1956. upon perusing the petition and the affidavit filed in support thereof and the order of the High Court dated 20-9-1954 and made herein and the counter affidavit filed therein and the records material to this petition and upon hearing the arguments of Mr. K.S. Varadachari, Advocate for the Petitioners and of the Advocate General for this state, the Respondent herein on all the days and this petition having stood over for consideration till this day, the court made the following ORDER:- For the reasons given in my judgment in W.P. No. 326 of 1955, I direct that the Rule be discharged and this Petition be dismissed with costs.

2-tsri

Srinivasa Puttar
Petitioner

Vide Govt. 3616 Pu
23/8

FIVE ANNAS

GOVERNMENT OF MADRAS

सत्यमेव जयते

5 As

5 आना

COPY STAMP

In the High Court of Judicature at Madras.

Writ Petition No. 531 of 1954

Memorandum of Costs.

Respondent's ( ) Costs.	Rs.	a.	p.
Stamp for Vakalatnama	0		0
For Advocate's fee vide V.P. 530/5. ---	0	0	0
Translation and Printing charges	0	0	0
	0	0	0

To be paid by the Petitioner to the Respondent.

(Sd) R. Narayanaswami Iyer,
11-5-1956
Asst. Registrar, T.S., & V.O.

(True Copy)

S. Srinivasan
Supdt. of Copyists.

92- 442

3rd and the last sut

cy by Sri

G. V. Ramam 11-8-56

S. Gopalarathnam 11-8-56

Special Government Pleader,
Madras.

ORDER, d/ 27-3-1956

W.P. No. 531 of 1954.

THE HIGH COURT OF JUDICA
AT MADRAS.

C P. No. 3631 of 1956

Made 28/3

Received

Presented

for 29

Posited 27/7 58

called for

posited

14.8 6

16.8 56

(Conv. 699234/52)

P.W.D.(I-2).

SUB: ELECTRICITY - Udipi company electrical undertaking Acquisition by Government - Writ petition in Madras High Court.

REF: From the Assistant Registrar, High Court, Madras, dated 30.8.54 (received on 4.9.1954).

--

The file deals with the writ petition filed by the liquidator of the Udipi Electric Supply Corporation Limited in the Madras High Court in regard to the acquisition of ~~its~~ the Corpn's electrical undertaking by the Government under the provisions of the Acquisition Act of 1949 - please see, in this connecti the writ of certiorari - Order Nisi dated 30.8.1954 from the High Court at p. 1 c.f. and the copy of the petition and the affidavit filed by the liquidator in the Court at pp 5-11 ƒ.

2. The Udipi company electrical undertaking was taken over by the Government in June 1951 under the provisions of the Madras Elecy. Supply Undertakings (Acquisition) Act 1949. The accredited representative of the Udipi licensee company selected Basis C for purposes of compensation payable for the undertaking under that Act. The amount of compensation as determined by the Government as payable for the undertaking under this Basis in accordance with the provisions of the above Act was not accepted by the accredited representative. So, at the instance of the accredited representative, the Govt. issued orders under Section 14(1) of the 1949 Act appointing Sri K. Chakravarti, Retired District Judge, as arbitrator to settle the dispute between the Govt. and the accredited representative in regard to the amount of compensation payable for some of the assets of the Udipi undertaking in respect of which there was difference between the amounts claimed by the accredited representative as

p.t.o.

compensation and the amounts sanctioned by the Govt. therefor. According to the award of the arbitrator in the dispute, the Govt. had to pay a sum of Rs 8,844-0-6 by way of additional compensation for the undertaking, together with interest thereon at 3% from 1.10.1951. The Arbitrator's award was accepted by both the parties to the dispute and the High Court also passed a decree in terms of the award. The amount due to the Udipi licensee from the Govt. under the Court's decree has already been tendered as deposit in the High Court.

3. In connection with the appeal preferred by the Rajahmundry licensee company against the judgment of the Madras High Court in regard to the competency of the State Govt. to acquire the electrical undertaking of that licensee under the Acquisition Act of 1949, the Supreme Court declared that Act to be void, the judgment of that Court being based on the ground that in the absence of an authorisation from the Governor-General under the Government of India Act, 1935, empowering the Madras Legislature to enact the above Act, the said Act was ultra vires the Provincial Legislature. To meet the situation arising out of the above judgment, fresh legislation has since been undertaken by the Government for the validation of the action already taken in respect of the electrical undertakings ~~already~~ acquired under the Acquisition Act of 1949 and for the acquisition of the remaining licensees' electrical undertakings in this State. The Acquisition Bill of 1954 passed by the State Legislature for the above purpose has been sent to the Government of India for obtaining the President's assent which is still awaited.

p.t.o.

4. The liquidator of the Udipi licensee company has now filed a writ petition in the Madras High Court in regard to the acquisition of the licensee's elecl. undertaking by the Govt. under the 1949 Act. The contention of the liquidator of the licensee company is that since the Acquisition Act of 1949 has been held to be invalid by the Supreme Court, the action of the Govt. in having acquired the Udipi company electrical undertaking in June 1951 under that Act is illegal and void and without the authority of law and that the Govt. should pay just and reasonable compensation to the licensee company for the illegal deprivation of the licensee's electrical undertaking. With reference to the above writ petition, the High Court has issued a Writ of Certiorari - Order Nisi on this Govt. asking them to produce (in the Court before 11.10.54) the records relating to the orders issued in G.O.Ms.No. 237, P.W. (Z) dated 18.1.51 (relating to the Udipi elecl. undertaking), all other connected documents touching the same and also to file appearance in the ~~High~~ Court on 11.10.1954.

5. In this connection, it may be mentioned that the Nellore electric licensee company whose undertaking was also acquired by the Government under the 1949 Act and which undertaking is now in the Andhra State, ~~State.has~~ filed a writ petition in the High Court, Madras, (i.e. prior to the establishment of a separate High Court for the Andhra State) against the acquisition of ~~his~~ its electrical undertaking by the Government of the composite Madras State under the provisions of the Acquisition Act of 1949, and both the Andhra and the present Madras Governments have been impleaded as respondents in the said petition. Since the Nellore licensee has claimed relief against this Government also, this Govt. have decided, on the advice of

p.t.o.

the Law Department, to contest the writ petition and the Special Government Pleader, Madras, has been asked to prepare, in consultation with the C.E.I.G. and the C.E.(E), the counter affidavit to be filed in the High Court on behalf of this Govt. and send it to the Govt. for approval. The draft counter affidavit is still awaited from the Special Government Pleader.

The present writ petition under consideration in this file is similar to the one filed by the Nellore licensee. The writ petition filed by the Nellore licensee has been ordered to be retained by the Chief Justice on the file of the present Madras High Court itself, having regard to the facts and circumstances of the case. It has been reported that the Advocate-General of the Andhra State will be appearing on behalf of that State before the Madras High Court in the above Writ petition and the Andhra Govt. have requested this Govt. to permit the Special Government Pleader, Madras, to enter appearance in the Court on behalf of the Advocate-General, Andhra, and to attend to all the necessary work on behalf of the Andhra Govt. also in this connection. The Special Govt. Pleader has replied, in consultation with our Advocate-General, agreeing to the Andhra Government's request at 'A' above. It has been proposed by this Deptt. in the Nellore case that the Advocate-General, Madras, may appear on behalf of this Govt. in that case. It is probable that the Writ petition filed by the Nellore licensee company, as also the present petition of the Udipi licensee company, will be taken up together for hearing by the High Court. In the circumstances, the Special Govt. Pleader may be asked, ~~as in the Nellore case,~~ to prepare, in

p.t.o.

consultation with the C.E.I.G., ~~and the C.E.(E)~~ (and the Advocate General), the counter affidavit to be filed in the High Court on behalf of the Government in the Writ petition filed by the liquidator of the Udipi licensee company and to send the draft counter affidavit to the Govt. for approval. As proposed in the Nellore case, the Advocate-General may be requested to appear on behalf of this Govt. in the High Court in connection with the present Writ petition also.

6 With reference to D on p. 3 ante, it would seem enough that if only the current file sheets relating to G.O.Ms.No. 237, P.W., dated 18.1.51 are filed in the High Court. It is presumed that the subsequent correspondence relating to assessment of compensation, arbitration etc. need not, however, be filed in the High Court unless the High Court specifically calls for these papers.

7 With reference to 'S' on on pp 4-5 above, a draft memo. to the Special Government Pleader is submitted. After issue, the file may be sent to the Law (Courts), Public (General F) and Finance for remarks, if any.

8/9/54 8/9/54 9.9.54 10/9/54

Law (Cts)
Public (A)

WW. 69923/54-2
11.9.54

1 issue - p134.

ASSISTANT SECRETARY
11 SEP 1954
13957
LAW DEPARTMENT

b

Law Department.

In the circumstances stated on Page 1-5 ante, the proposals at S,T and M above are agreed to in this Department.

cir
14-9-54

Pub Wks
14/9/54
D.S.

Public (Gen I)

The Memo. at p. 13 ci may be perused and the file passed on to Finance

Law
14/9/54

cir
15.9.54

UNDER SECRETARY
5667
15 SEP 1954
PUBLIC DEPARTMENT

Lawno 13957e/54
14.9.54
mk L.F.

fin. (Exp I)
Notes from page 1 above may be read.
2. The proposal at 'T' on p 5 above may be agreed to in this dept.

16.9.54

Pub
16.9.54

Pub

Public General file
5667/54
15/9/54

DEPUTY SECRETARY TO GOVERNMENT
5668
15 SEP 1954
FINANCE DEPARTMENT

ASSISTANT SECRETARY TO GOVERNMENT
for
17 SEP 1954
73416
PUBLIC WORKS DEPARTMENT

Fin no 16.9.54

Pub(Ex 2)

Please see Law, Public & Fin Depts. above agreeing to the proposals of this dept.

2. In the Nellore case referred to at T on p 5 ante, dealt with in the top file orders are proposed to be taken in circulation to the effect that the Advocate General may represent this Govt. in the High Court in connection with the hearing of the

writ petition relating to the Indian steel undertaking also. The ~~necessary~~ draft order giving effect to the above proposal is proposed to be circulated to Ministers for approval & the draft order provides for the suggestion in para 6 onp 5 ante. In the circumstances, no separate action in this file is called for with reference to T and M onp 5 ante. This file may be l.o. pending issue of the draft order perhaps as well.

17.9.54

17-9-54

18/9/54

Please see M above. A copy of the order issued in the top case has been added to the current file – Please see pp 15-17 ante. The draft counter-affidavit called for in the memo on p 13 ante may be awaited till 1.10.54.

22/9.54

21/9/54.

22/9/54

(To the Spl. G.P., No. 69923 D/54-3 dt 1.10.54)

The writ petition will come up for hearing on 11.10.54. So far, the draft of the counter-affidavit called for from the Spl. Govt. Pleader has not been received. It is presumed that the Spl. Govt. Pleader will apply in the Court for time for the filing of the counter affidavit. The draft reminder to the Spl. Govt. Pleader below is for approval.

8.10.54 8/10/54.

8/10/54

4

(From the C.I.G., No. 151 N/54-244 dt 12-10-54) — N 2 — 4 —

(From the Spl. C.P., No. 4392 dt 13.10.54) — 1 to 5

(To the Spl. Cab., No. 69923 d/54-6 dt 10.11.54) — 1 to 5 ff

(From the Spl Cab, No. 4686 dt 15.11.54) — p 37 ff.

(To the Spl Cab, No. 69923 d/54-7 dt 22.11.54) — p 39 ff

(" " , No. 69923 d/54-8 dt 6.12.54) — p 41 ff

(" " , No. 69923 d/54-9 dt 15.12.54) — p 42 ff

Please see p21 ff and p35 ff. In spite of several reminders, no final reply has been received from the Spl. Govt. Pleader apart from the interim replies at p31 ff and p37 ff. Apparently, it is not likely that the petition will come up for hearing in the immediate future. It does not seem necessary to remind the Spl Cab & a D.O. Draft letter below is for approval.

7.12.54 — 7.12.54 — 24/25.12.54

(Issued as amended No. 69923 d/54-10 dt 28.12.54) — p 43 ff

(" " No. 69923 d/54-11 dt 10.1.55) — p 45 ff

(" " No. 69923 d/54-12 dt 1.2.55) — p 47 ff

(From the Special Govt. Pleader, No. 5744 dt 11.2.55) — p 49 — 57 ff

Please see the letter from the Special Govt. Pleader (together with encl) at p 49 — 57 ff. It is not stated whether the draft Counter affidavit sent by the Spl. C.P. was prepared in consultation with the C.I.G., CSCS) and the Advocate General. — p 49 ff

See p 13 ff.

The Special G.P. may be Consulted in the matter. Draft memo below is for approval

17.2.55 — 17.2.55 — 17.2.55

(Issued as memo No. 69923 D/34-13 dt 17-2-55)

(Noon the Spl. Govt. Pleader, No. 5982 dt 24.2.55)

Please see the memo to the Special Govt. Pleader at p 51 cf and the reply thereto at p 53 cf. The statement of the Spl. G.P. at X on p 53 cf is not correct. vide para 2 of G.O. Ms. No. 3332 Rev dt 21.5.54, wherein the Advocate General has been asked to appear in the High Court in connection with the writ petition relating to the Andhra electricity undertaking. This may be pointed out to the Spl. G.P. & he may be asked to frame the draft counter affidavit settled in consultation with the Advocate General & then send it to Govt. for approval. Draft below is for approval.

2.3.55 — 2.3.55 — 2.3.55

(Issued as memo No. 69923 D/34-14 dt 2.3.55)

(70)

(CNO. 69923 9/54)

(From the C.E.I.G. No.151 N/51-257 dated 16-4-1955). H65-66y

(From the C.E.(E) No.2588 E/54-11 dated 22-4-1955). p75y

(From the C.E.I.G. No.151 N/51-258 dated 26-4-1955). p77y

The file relates to the writ petition filed by the liquidator of the Udipi Electric Supply Corporation in the High Court in regard to the acquisition of the Corporation's elecl. undertaking by the Govt. under the Acquisition Act of 1949. H5-10y

2. The Udipi company elecl. undertaking was taken over by the Govt. in June 1951 under the provisions of the Madras Elecy. Supply Undertakings (Acquisition) Act 1949. The accredited representative of the Udipi licensee company selected Basis C for purposes of compensation payable for the undertaking under that Act. The amount of compensation as determined by the Govt. as payable for the undertaking under this Basis in accordance with the provisions of the above Act was not accepted by the accredited representative. So, at the instance of the accredited representative, the Govt. issued orders under Section 14(1) of the 1949 Act appointing Sri K. Chakravarti, Retired District Judge, as arbitrator to settle the dispute between the Govt. and the accredited representative in regard to the amount of compensation payable for some of the assets of the Udipi undertaking in respect of which there was difierence between the amounts claimed by the accredited representative as compensation and the amounts sanctioned by the Govt. therefor. According to the award of the arbitrator in the

H1 (Z)

p7y (R)

p149y (K)

p1y (J)

H11-12y (J)

H77-79y (S)

dispute, the Govt. had to pay a sum of Rs.8,844-0-6 by way of additional compensation for the undertaking, together with interest thereon at 3% from 1-10-1951. The Arbitrator's award was accepted by both the parties to the dispute and the High Court also passed a decree in terms of the award. The amount due to the Udipi licensee from the Govt. under the Court's decree has already been tendered as deposit in the High Court.

3. In view of the Supreme Court's decision in Feb.1954 declaring the Acquisition Act of ~~1954~~ 1949 void, fresh legislation has since been enacted by the Madras Legislature for the acquisition of the remaining elecl. undertakings in this State and for validation of the proceedings already taken in relation to elecl. undertakings acquired under the 1949 Act. The new Madras Elecy. undertakings (Acquisition) Act 1954 came into force on 13-10-1954 after receiving the President's assent. Prior to the coming into force of the new Act, the Liquidator of the Udipi licensee Co. filed a writ petition in the High Court praying for fair, due and just compensation for the alleged illegal deprivation by the Govt. of the undertaking of the licensee under the impugned Act of 1949. A copy of the affidavit filed in the Court on behalf of the licensee co. is at pp.7-10 c.f.

4. The Special Govt. Pleader has now sent to the Govt. (through the C.E.I.G.) for approval the draft of the Counter affidavit to be filed in the High Court on behalf of the Govt. The draft is said to have been settled in consultation with the Advocate-General. The remarks of the C.E.I.G. on the draft are at pp.65-66 c.f. The C.E.(E) has endorsed the remarks of the C.E.I.G. The points raised by the C.E.I.G. with reference to the draft

counter affidavit are noted on below:-

Para 2(A) of C.E.I.G's letter: The formal reservations made by the accredited representative in his letter dated 23-5-51 and in his declaration dated 1-6-51 referred to in para 2(A) of C.E.I.G's letter were only with regard to the rights of the Co. for fair compensation and such reservations cannot be construed as amounting to non-co-operation on the part of the licensee Company in handing over the assets of the undertaking to the Govt. In the circumstances, there appears to be no serious objection to the retention of the sentence at 'X' on p.69 c.f. in the draft counter affidavit in regard to which the C.E.I.G. has raised this point.

Para 2(B) of C.E.I.G's letter: The position set out in para 7 of the counter affidavit would appear to be adequate and there seems to be no need to amplify it by embodying the sentence at 'E' on p.65 c.f. Moreover, the question of compensation on the basis of the provisions in the I.D. Act, i.e. 'fair market value' basis, may now have to be viewed with reference to the amendment to Article 31 of the Constitution recently passed by the Union Parliament. After the amendment referred to above has been passed into law, the question of anyone whose property has been acquired by the Govt. claiming compensation therefor on fair market value basis, would not arise, and our legal officers and the ~~Govt~~ Court may be expected to keep this position in view when arguing or deciding on this point.

Para 2 (C) of C.E.I.G's letter: No action seems called for on the suggestion of the C.E.I.G. in this regard in view of 'S' at bottom of p.72 c.f. which seems to be quite adequate for the purpose in view.

5. Reference is in this connection invited to the ment at 'A' in para 4 of the counter affidavit

on p.69 c.f. In 1951, the accredited representativ made certain reservations (as already referred to at 'K' on p.12 ante) to the effect that the assets of the Udipi undertaking would be or were handed over to Govt. without prejudice to the rights of the Co. for fair compensation (as distinct from the basis of compensation provided for in the Acquisiti Act). In view of this reservation, the statement at 'A' on p.69 c.f. in the counter affidavit does not seem to be quite correct. However, there seems to be no harm in allowing that statement to stand as it is, leaving it to the Counsel for the petitioner to contest it before the High Court if he so chooses.

6. The draft counter affidavit at pp.67-73 c.f. would seem to require certain formal alterations as indicated therein in pencil. After the draft has been finalised, a copy of it may be sent to the C.E.I.G. for taking action as suggested by the Special Govt. Pleader at p.61 c.f.

7. It may be mentioned in this connection that the liquidator of the Srivilliputtur Taluk Electric Co. Ltd. has since filed a writ petition in the High Court against the acquisition by the Govt. of the Srivilliputtur (i.e. West Ramnad) electrical undertaking which vested in the Govt. under the Acquisition Act of 1949. His contention is that since the Acquisition Act of 1949 has been held void by the Supreme Court, the new Acquisition Act of 1954 is also void to the extent it provides for revalidation of the proceedings taken under the 1949 Act in respect of undertakings acquired under that Act and that the new Act also provides for discriminatory treatment in the matter of the order of acquisition of undertakings and as such is in contravention of Art. 14 of the Constitution.

p.t.o.

This case is being dealt with separately. But as the two cases, viz. Uidipi and Srivilliputtur, under reference relate to the same subject, it is probable that they may both be heard together by the High Court. But since the point ~~received~~ raised in respect of the Srivilliputtur undertaking will be met in the Counter affidavit to be filed on behalf of the Govt. in that case, no alteration or addition to the draft counter affidavit in the present case of the Udipi undertaking seems called for with reference to the Srivilliputtur case mentioned above.

8. The file may be sent to the Law Deptt. for remarks with reference to paras 4 to 7 on pp.11-14 above and for scrutiny of the draft counter affidavit at pp.67-73 c.f.

16-5-55

19/5/55

Law Department

Pwno.69923/54-18
23/5/55.

The amendment of Article 31 of the Constitution by the Constitution (Fourth Amendment) Act, 1955, cannot apply to this case since the amendment has not been given retrospective effect. Subject to the above remark, this Department agrees with the view of P.W.D. expressed in their note at paragraphs 4 to 7.

The draft counter affidavit at pages 67-73 c.f. as amended by P.W.D. is in order.

3-6-55

ASSISTANT SECRETARY 25 MAY 1955 LAW DEPARTMENT, MADRAS

ASST. SECRETARY TO GOVERNMENT 4 JUN 1955 Law Dept. M.J.172/55-1

3/6/55

(Crl.o. 69923/54)

PWD(J)

Please see the note of the Law Deptt at p 14 ante. A copy of the draft Counter affidavit, as amended by the Deptt., may be forwarded to the C.I.G. for taking further action on the lines suggested by the Special Govt Pleader at p 61 y. The draft memo below is for approval.

6/6/55 6-6-55

7.6.55

p 79 y — (Issued as memo no. 69923 d/54-20 dt 8.6.55)

p 81 y (From the C.I.G., no. 151 N/57-263 dt 15.6.55)

Please see the letter (together with encl). from the C.I.G. at pp 87-93 y. Further Communication from the Spl. Govt. Pleader regarding the stage of the writ petition may be awaited till 15-7-55.

17.6.55

17.6.55

No further Communication has been received. Draft reminder to the Spl. Govt. Pleader below is for approval.

15.7.55.

15/7/55

p 95 y

(Issued as memo no. 69923/54-21 dt 15/7/55)

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(WNo. 699234/54)

From the High court, judgment dt 27.3.56. Pp 121-124

The writ petition filed by the liquidator of the Indian Licensee Co. against the Madras Govt. in regard to the acquisition of the Indian Co. elect. undertaking has been dismissed by the High court. The draft memo put up in the dismissed file I also provides for sending a copy of the judgment in this case also to the C.E.(C) & the C.E.(E) for info. In the circumstances, no particular action is called for in this file and the papers may be recorded.

Copy at pp 125 cf

30/7/56

(C) 31.7.56

S. OMS. 3535 dt 16.8.56

Elecy - Madras Elecy. Undertakings (Acquisition) Act, 1954 - Indian Co. Elect. undertaking - Acquisition by Govt. - Writ petition in Madras High court - Papers recorded.

30.7.56. 31/7/56

20/2/56